Filed 9/29/15 Cal. Native Plant Society v. County of L.A. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CALIFORNIA NATIVE PLANT SOCIETY et al., Plaintiffs and Appellants, v. COUNTY OF LOS ANGELES et al., Defendants and Respondents; THE NEWHALL LAND AND FARMING COMPANY, Real Party in Interest.	B258090 (Los Angeles County Super. Ct. No. BS138001)

APPEAL from an order of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Center for Biological Diversity, John Buse and Aruna Prabhala; Wishtoyo Foundation/Ventura Coastkeeper and Jason Weiner; and Advocates for the Environment and Dean Wallraff for Plaintiffs and Appellants.

Mark J. Saladino, County Counsel, Mary C. Wickham, Acting County Counsel, and Joseph M. Nicchitta, Deputy County Counsel, for Defendants and Respondents.

Gatzke Dillon & Ballance, Mark J. Dillon and David P. Hubbard; Nielsen Merksamer Parinello Gross & Leoni and Arthur G. Scotland; and Morrison & Foerster and Miriam A. Vogel for Real Party in Interest.

I. INTRODUCTION

This is an appeal from a June 9, 2014 judgment by plaintiffs: California Native Plants Society; Friends of the Santa Clara River; Center for Biological Diversity; Santa Clarita Organization for Planning and the Environment; and Wishtoyo Foundation and its Ventura Coastkeeper Program. Defendants are the County of Los Angeles (the county) and its Board of Supervisors (the supervisors board). The real party in interest is The Newhall Land and Farming Company (the developer). At issue are environmental approvals of the developer's Mission Village Project located in an unincorporated portion of the county.

The June 9, 2014 judgment denied plaintiffs' first amended verified mandate petition and injunctive and declaratory relief complaint. The judgment upheld defendants' October 25, 2011 certification of the environmental impact report and approval of an overriding considerations statement. The judgment upheld the following May 15, 2012 administrative actions by defendants: approval of two conditional use permits; returning findings there was substantial conformity with the certain grading and set back requirements imposed by the Newhall Ranch Specific plan (the specific plan) which was approved in 2003; issuance of two oak tree permits; issuance of a parking permit; and approval of a vesting tentative tract map. We affirm the June 9, 2014 judgment.

II. THE PROJECT

The project is located south of the Santa Clara River and State Route 126 within the northeast corner of the specific plan area. The project is located west of Interstate Highway 5 and east of the Ventura County boundary. The Mission Village project involves the construction of 4,055 dwelling units (351 single-family and 3,704 multi-family dwellings). Further, the Mission Village project consists of: 1,555,100 square feet of mixed-use/commercial development; 693 acres of open space which includes 26.8

acres of public parks, 14.7 acres of private recreational facilities and 85.8 acres and 3 San Fernando Valley Spineflower (Spineflower) preserves. In addition, the Mission Village project includes a 9.5 acre elementary school, a 3.3 acre library, a 1.5 acre fire station and a 1.2 acre bus transfer station site.

III. GENERAL PLAN CONSISTENCY REQUIREMENT CONTENTION

A. Plaintiffs' Causes Of Action Concerning the General Plan Consistency Requirement

The first amended petition contains allegations concerning the requirement that land use decisions be conducted in a manner consistent with a general plan. The first cause of action alleges violations of the state planning and zoning laws. (Gov. Code, § 65008 et seq.) According to the first amended petition, the Development Monitoring System was adopted on April 21, 1987, as part of the county's general plan. The Development Monitoring System requires that a project not be approved unless the county determines that an acceptable infrastructure will be available to service the development. The first amended petition alleges that the project is inconsistent with the Development Monitoring System in particulars as we will describe later. Further, for water companies, according to plaintiffs, the Development Monitoring System analysis must be based upon current and anticipated water usage and other matters. Plaintiffs also allege the necessary Development Monitoring System determinations were not based upon up-to-date values. In addition, plaintiffs allege general plan inconsistency in connection with the project's sewer capacity.

The second cause of action alleges a violation of the Subdivision Map Act. According to the second cause of action: there was noncompliance with the water usage and sewer capacity provisions of the general plan's Development Monitoring System; defendants relied upon a Water Supply Assessment Report prepared by Valencia Water Company; and that report does not provide substantial evidence of a sufficient water supply for the project in dry and multiple-dry years over a 20-year period. The third

cause of action alleges violations of the California Environmental Quality Act requirements for an environmental impact report. Plaintiffs allege the environmental impact report fails to properly analyze the project's inconsistencies with the general plan. According to plaintiffs, the environmental impact report fails to adequately discuss the project's failure to comply with the general plan's Development Monitoring System requirements.

B. The Development Monitoring System and the General Plan

1. The supervisors board resolution adding the Development Monitoring System to the general plan.

We first examine the supervisor board's resolution adopting the April 21, 1987 general plan amendment. The resolution adopting the Development Monitoring System states it: establishes procedures for scrutinizing new urban growth in expansion areas within the county; is designed to determine the availability of school, fire, sewerage, library, water and road services and facilities on an individual and cumulative basis; is to analyze the expansion costs of school, sewerage and library providers resulting from the development; ensures those new development costs are paid by the developer; makes certain services can be expanded to meet future growth projections; and provides new development occur near already established services. The supervisor board's resolution amending the general plan states: "The [Development Monitoring System] shall be employed in the initial study phase of the environmental review procedure (prescribed by state law) and shall apply to pending and future urban development applications for changes of zone classification, general plan amendments, conditional use permits, other zoning permits, and subdivisions in Urban Expansion Areas depicted on the Development Policy Map of the General Plan. . . ."

2. Relevant Development Monitoring System purposes, goals and case processing requirements

a. purposes

We now synthesize the relevant portions of the Development Monitoring System itself as distinguished from the supervisor board's authorizing resolution. The Development Monitoring System is designed to avoid increased public expenditures resulting from development: "It is essential that decision-makers carefully evaluate new development proposals within the urban expansion areas to avoid premature investments in major new public services systems and minimize related costs to taxpayers. In particular, development should be carefully evaluated with regard to the expansion costs it may generate. The [Development Monitoring System] is designed to be of major assistance in ensuring that such factors are considered prior to making land use decisions." The Development Monitoring System requires review of specified aspects of a proposed development: "The infrastructure analysis under the [Development Monitoring System] will determine the availability of water, sewerage, schools, libraries, roads and fire, as well as the expansion costs for schools, fire, sewerage, and libraries." We will set forth in greater detail the factors and criteria for evaluating water supply specified in the Development Monitoring System. The monitoring system is to provide "basic information" to the Regional Planning Commission and the supervisors board.

At another point, the Development Monitoring System states: "Other issues associated with new development, such as mitigation of hazards, access factors, and compatibility of natural resources, will be evaluated by the County's [Development Monitoring System] procedure. The [Development Monitoring System] analysis will be incorporated into the environmental review procedures, pursuant to the California Environmental Quality Act." Before a development application may be approved, the "planning agency" must determine whether the project conforms to the following general plan policies: avoidance of premature conversion to urban uses; promotion of population

growth consistent with service system capacity, resource availability, environmental limitations and "accessibility"; direction of urban development and redevelopment to protect "natural and man-made amenities" and the avoidance of hazardous areas; encouragement of efficient land use; insuring compliance with plan requirements and that expansion costs will be paid for by the development; and creation of an "inter-dependent system of activity centers" to provide services throughout the urban area.

The Development Monitoring System specifies a 13-step case processing progression involving preparation of a case report and environmental review. The case report and the environmental review documents are prepared concurrently and ultimately presented to the Regional Planning Commission. We now turn to the 13-step process specified in the Development Monitoring System.

b. environmental review process

The initial step in the environmental review process commences with the filing of the project application. After filing of the case, the initial study is conducted. The initial study involves an evaluation of both environmental factors and an infrastructure analysis. Both the environmental factors and the infrastructure analysis include evaluation of the Development Monitoring System factors. The infrastructure analysis in the Development Monitoring System uses the "Urban Services Analysis." The Urban Services Analysis: evaluates service provider information which sheds light on the adequacy of infrastructure; assesses expansion costs for schools, fire, sewerage and libraries; and provides a formula for calculating expansion costs.

The initial study determines whether there is a potentially significant environmental impact. This in turn leads to the preparation of the appropriate environmental document. The Development Monitoring System factors are to be incorporated into the environmental document. The general plan amendment states, "The [Development Monitoring System] analysis will be incorporated into the environmental review procedures, pursuant to the California Environmental Quality Act." In our case,

this requires the Development Monitoring System analysis be incorporated into the initial study and the environmental impact report. We need not decide the extent of the inter-relationship between the initial study and the Development Monitoring System requirements. The environmental impact report is then presented to the Regional Planning Commission.

c. case report

Concurrently with the environmental review, a case report is prepared. The case report evaluates zoning and land division issues. This is accomplished in consultation with appropriate county and state agencies as the case may be. The case report is then forwarded to the Regional Planning Commission for action.

d. planning commission action

The Regional Planning Commission then reviews the case report and, in this case, the environmental impact report. The Regional Planning Commission determines whether the project meets three factors specified in the Development Criteria and Methodology of the Development Monitoring System; infrastructure; access; and environment. In terms of infrastructure, the Regional Planning Commission evaluates whether the development has an acceptable level or significant impact on service. As to access, among other things, the Regional Planning Commission determines whether the project has proximity to commercial development and provides for an acceptable level of road service. As to the ecological effects, the Regional Planning Commission evaluates the environmental impacts in terms of the following factors: geotechnical; flood hazard; fire; natural resources; open space; and mitigation factors.

If the development meets the three aforementioned criteria, infrastructure, access and environmental, the Regional Planning Commission is to find the project complies with the Development Monitoring System. If the development does not meet the criteria,

the Regional Planning Commission must consider the mitigation measures. The Development Monitoring System states: "If the application of mitigation measures brings the . . . development into conformance with the policies set forth in the [Development Monitoring System], then the planning agency may approve the proposed development, making appropriate findings. If the application of mitigation measures is not sufficient, or if the mitigation measures or alternatives are not feasible, then the planning agency shall deny the proposed development or provide a statement of overriding considerations." All Regional Planning Commission findings in this regard must supported by substantial evidence.

C. General Plan Requirements

Plaintiffs argue that the failure to comply with the Development Monitoring System, which is part of the general plan, violates requirements imposed by the Subdivision Map Act. (Gov. Code, § 66410-66499.38.) An integral part of the project involves approval of a vesting tentative tract map and related documents. The project consists of the development of a 621-lot subdivision sitting on 1,262 acres. Thus, when a developer seeks to subdivide its property, compliance with the relevant provisions of the Subdivision Map Act is mandatory. (*van't Rood v. County of Santa Clara* (2003) 113 Cal.App.4th 549, 564; *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1197-1198.) Government Code section 66473.5 states in part, "No local agency shall approve a tentative map . . . unless the legislative body finds that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan. . . ." (See *Woodland Hills Residents Association, Inc. v. City Council* (1979) 23 Cal.3d 917, 936; *van't Rood v. County of Santa Clara, supra,* 113 Cal.App.4th at p. 564.)

D. Consistency Requirement and Standard of Review

Plaintiffs present a two-pronged analysis of the consistency issue. Plaintiffs argue that defendants failed to proceed as required by the Development Monitoring System. In addition, plaintiffs argue the project's initial study and environmental impact report fail to discuss the purported inconsistency between the general plan and the project. An environmental impact report's failure to discuss an inconsistency between a general plan and a project, if prejudicial, is a ground for setting aside the certification of environmental documents. (Guidelines, § 15125, subd. (d)[1]; see 2 Kostka & Zischke, Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2014) § 20.3, pp. 20-8 to 20-9.) In this limited regard, plaintiffs contend that water and sewer capacity analysis in the initial study and the environmental impact report violate the general plan.

There is no requirement of perfect conformity between a general plan and a specific land use decision. The Courts of Appeal have applied the following rule for evaluating consistency between a general plan and a land use decision: "'Our evaluation of appellants' contention is governed by well established standards.' '"""An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." [Citation.]' [Citation.] State law does not require perfect conformity between a proposed project and the applicable general plan. . . . [Citations.]" (*Friends of Lagoon Valley*[*v. City of Vacaville* (2007)] 154 Cal.App.4th 807,] 817.) In other words, "it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. . . . It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs

[1] Unless otherwise specifically delineated, references to Guidelines are to those located in California Code of Regulations, title 14, section 15000 et seq. These Guidelines are promulgated by the California Natural Resources Agency to implement the California Environmental Quality Act. (§ 21083, subd. (e); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448, fn. 4.)

specified in the applicable plan. [Citations.]" (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1510-1511 [].)' [Citation.]" (*San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 513-514 (*San Francisco Tomorrow*); see *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1562-1563 (*Pfeiffer*).)

Utilizing the consistency test identified in the immediately foregoing paragraph, as described by this state's Courts of Appeal, we engage in the following deferential standard of review. An agency's determination that a project is consistent with the general plan comes before us with a strong presumption of regularity. (*San Francisco Tomorrow, supra,* 229 Cal.App.4th at p. 514; *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638.) We may not reweigh conflicting evidence nor substitute our views for that of the agency approving a project. (*San Francisco Tomorrow, supra,* 229 Cal.App.4th at p. 514; *Wollmer v. City of Berkeley* (2009) 179 Cal.App.4th 933, 940.) We show this deference because the body adopting a general plan has unique competence to interpret those policies when applying them to a proposed project. (*Pfeiffer, supra,* 200 Cal.App.4th at p. 1563; see *San Francisco Tomorrow, supra,* 229 Cal.App.4th at p. 515.) Given this expertise, it is not our role to micromanage development decisions. (*California Native Plant Society v. City of Rancho Cordova, supra,* 172 Cal.App.4th at p. 638; *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719 (*Sequoyah*).)

We review an agency's consistency finding for an abuse of discretion. (*San Francisco Tomorrow, supra,* 229 Cal.App.4th at p. 514; *Friends of Lagoon Valley v. City of Vacaville, supra,* 154 Cal.App.4th at p. 816.) A consistency determination will be set aside on abuse of discretion grounds if: the agency did not proceed legally; if the conclusion that a project and a general plan are consistent is not supported by findings; or if the findings are not supported by substantial evidence. (Code Civ. Proc., § 1094.5, subd. (b); *San Francisco Tomorrow, supra,* 229 Cal.App.4th at p. 514; *Sequoyah Hills Homeowners Assn., supra,* 23 Cal.App.4th at p. 717.) In terms of a consistency issue, we may set aside an agency's substantial evidence finding only if no reasonable person

would have reached the same conclusion. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 238; *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1338.)

Some appellate courts have more generally described our duty thusly: "'A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' [Citation.]" [Citation.]'" (*Friends of Lagoon Valley v. City of Vacaville, supra,* 154 Cal.App.4th at p. 816; quoting *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 677-678; see *Wollmer v. City of Berkeley, supra,* 179 Cal.App.4th at p. 940.) We resolve reasonable doubts in favor of the administrative decision. (*Topanga Assn. for a Scenic Community v. County of Los Angeles (*1974) 11 Cal.3d 506, 514-515; *Wollmer v. City of Berkeley, supra,* 179 Cal.App.4th at p. 940.) We review an agency's consistency finding independently and are not bound by the trial court's conclusions. (*Pfeiffer, supra,* 200 Cal.App.4th at p. 1563; *Friends of Lagoon Valley v. City of Vacaville, supra,* 154 Cal.App.4th at p. 816.)

E. Initial Study and Water Capacity

Plaintiffs contend that concerning the water capacity analysis mandated by the Development Monitoring System in the initial study is grossly inadequate. The initial study is dated October 25, 2004. The initial study concludes there is substantial evidence that the Mission Village project may have a significant environmental impact. Attached to the initial study is the urban services analysis required by the Development Monitoring System. The urban services analysis contains a water availability evaluation. According to plaintiffs, the initial study fails to properly take into account the: current capacity of the service provider to supply well water annually in acre-feet; deficit or surplus within the service provider's area; and the service provider programmed schedule to extend

capacity in the future. Defendants and the developer argue this issue has been forfeited as it relates to the initial study. We agree.

As noted, the first cause of action alleges the project is inconsistent with the Development Monitoring System. The first cause of action alleges the environmental impact report and "other approval documents" contains no record of the county having complied with the general plan's Development Monitoring System. The second cause of action alleges violations of the Subdivision Map Act. The relevant allegation in the second cause of action is the environmental impact report fails to properly discuss the inconsistency between what the project and the Development Monitoring System. The third cause of action alleges that the environmental impact report fails to adequately discuss the failure of the project to comply with the Development Monitoring System. However, the first amended complaint contains no allegations concerning water supply deficiencies analysis under the Development Monitoring System *in the initial study*. Plaintiffs' statement of issues filed in the trial court references defects in the Development Monitoring System analysis in the environmental impact report. Further, the argument in plaintiffs' opening brief filed in the trial court makes no mention of the initial study. Rather, the only issue raised in the opening brief filed in the trial court concerning water capacity and the Development Monitoring System refers to the environmental impact report. And even then, plaintiffs' opening brief notes no challenge is being made under the California Environmental Quality Act. Thus, plaintiff's contentions raised for the first time on appeal concerning water capacity, the Development Monitoring System and the initial study have been forfeited. (*Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360, 380, fn. 16; *A Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1804.)

F. Environmental Impact Report and Water Capacity

The first amended petition alleges the following: defendants failed to comply with Development Monitoring System requirements concerning water supply for the project; thus, defendants violated Government Code section 65454 because the project was inconsistent with the general plan Development Monitoring System; defendants failed to condition approval of the tract map on the availability of sufficient water supply to serve future development; and the environmental impact report fails to properly analyze the inconsistencies between a project and the general plan. Plaintiffs' issue statement filed in the trial court states: "The Los Angeles County General Plan contains a set of procedures called the Development Monitoring System [], and requires the [c]ounty to use these procedures to evaluate infrastructure availability for proposed development projects. They mandate evaluation of the availability of water supplies and other infrastructure based on service-provider (e.g. retail water purveyor) boundaries, and based on specific data provided by the service provider. The [Development Monitoring System] also requires the [c]ounty to make specific findings before approving a project. The [environmental impact report's Development Monitoring System] analysis is based on incomplete data, and data covering a much larger area than the [p]roject's service-provider area. The [c]ounty also failed to make the findings required by the [the Development Monitoring System] before approving the [p]roject. Is the [p]roject consistent with the [g]eneral [p]lan?"

Plaintiffs' points and authorities filed in the trial court argued that the project is inconsistent with the general plan because defendants failed to undertake the required Urban Services Analysis. Plaintiffs argued in part: "The . . . [p]roject is inconsistent with the . . . [g]eneral [p]lan because the [c]ounty did not follow the procedures to ensure adequate infrastructure for the [p]roject mandated by the [g]eneral [p]lan's Development Monitoring System." Plaintiffs' points and authorities filed in the trial court argue that defendants failed to properly undertake the Urban Services Analysis required by the general plan's Development Monitoring System. Specifically, plaintiffs argue: "Even

though the [Development Monitoring System] requires the project analysis to be based on the available capacity of the purveyor, here the record contains no analysis of [the Valencia Water Company]'s capacity to provide sufficient water for the [p]roject. The scope of the water-supply analyses in the record is the entire Santa Clarita Valley, not the portion of the Santa Clarita Valley served by the Valencia Water Company. This use of the wrong area for analysis makes the analysis inconsistent with [the Development Monitoring System] requirements." Plaintiffs' points and authorities concluded, "Because the record lacks an analysis of the [project's] water supply based on the factors required by the [Development Monitoring System] . . . , the [c]ounty has not complied with mandatory requirements of the [g]eneral [p]lan, and the project is therefore inconsistent with the [g]eneral [p]lan."

On appeal, plaintiffs argue that the environmental impact report's water-supply analysis does not contain information required by the Development Monitoring System. At the outset, any issue concerning the water supply discussion and the California Environmental Quality Act has been forfeited. Plaintiffs expressly described their arguments in the trial court as follows while describing the Development Monitoring System, "The contours of this process resemble [the California Environmental Quality Act], but [plaintiffs' Development Monitoring System] claim is brought under the Subdivision Map Act, Government Code §§ 66410-66499.88, not under [the California Environmental Quality Act]." The Development Monitoring System requires that the relevant discussion be included in the environmental planning documents. The sole water supply issue that is preserved is whether the environmental impact report includes the discussion required by the Development Monitoring System. Any other contentions concerning water service and the Development Monitoring System have been forfeited. (*Citizens Opposing a Dangerous Environment v. County of Kern*, *supra*, 228 Cal.App.4th at p. 380, fn. 16; *A Local & Regional Monitor v. City of Los Angeles, supra,* 12 Cal.App.4th at p. 1804.)

The Development Monitoring System requires the following in terms of evaluating water systems: "The planning agency shall determine if a project will be

provided with an acceptable level of water supply and shall base its determination upon the following Summary Reference Manual data: [¶] a. The current water consumption (in acre-feet or gallons) within the service area boundaries[;] [¶] b. The current capacity of the service provider to supply water (in acre-feet per year); [¶] c. The deficit or surplus within the service provider's area, calculated by determining the difference between *capacity* and usage; [¶] d. The anticipated usage of water by new development on a per unit basis; [¶] e. The programmed schedule of the service provider to expand its capacity in the future." (Italics added.)

The following demonstrates defendants complied with the Development Monitoring System in evaluating water supply availability for the Mission Village project. As noted, the Development Monitoring System requires its analysis appear as part of the California Environmental Quality Act ecological review process. Further, the Development Monitoring System leads to the decision maker reviewing the appropriate environmental document. In this case, the ultimate decision maker is the supervisors board.

A material part of the environmental impact report relies on two urban water management plans. (Wat. Code, § 10615[2].) Among other things, an urban water management plan provides: an existing and planned water sources for five-year increments; a projected population growth for the same five-year increments; a detailed description of water sources and the amount and location of groundwater; a description of the water supply's reliability for single and multiple-dry years; and a description of uses

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[2] Water Code section 10615 describes an urban water management plan thusly: "'Plan' means an urban water management plan prepared pursuant to this part. A plan shall describe and evaluate sources of supply, reasonable and practical efficient uses, reclamation and demand management activities. The components of the plan may vary according to an individual community or area's characteristics and its capabilities to efficiently use and conserve water. The plan shall address measures for residential, commercial, governmental, and industrial water demand management as set forth in Article 2 (commencing with Section 10630) of Chapter 3. In addition, a strategy and time schedule for implementation shall be included in the plan."

in the same five-year increments. (Wat. Code, § 10631, subds. (a)-(d)[3]; see *Sonoma County Water Coalition v. Sonoma County Water Agency* (2010) 189 Cal.App.4th 33, 38,

[3] Water Code section 10631, subdivisions (a) through (e)(2) states: "A plan shall be adopted in accordance with this chapter that shall do all of the following: [¶] (a) Describe the service area of the supplier, including current and projected population, climate, and other demographic factors affecting the supplier's water management planning. The projected population estimates shall be based upon data from the state, regional, or local service agency population projections within the service area of the urban water supplier and shall be in five-year increments to 20 years or as far as data is available. [¶] (b) Identify and quantify, to the extent practicable, the existing and planned sources of water available to the supplier over the same five-year increments described in subdivision (a). If groundwater is identified as an existing or planned source of water available to the supplier, all of the following information shall be included in the plan: [¶] (1) A copy of any groundwater management plan adopted by the urban water supplier, including plans adopted pursuant to Part 2.75 (commencing with Section 10750), or any other specific authorization for groundwater management. [¶] (2) A description of any groundwater basin or basins from which the urban water supplier pumps groundwater. For basins that a court or the board has adjudicated the rights to pump groundwater, a copy of the order or decree adopted by the court or the board and a description of the amount of groundwater the urban water supplier has the legal right to pump under the order or decree. For basins that have not been adjudicated, information as to whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition. [¶] (3) A detailed description and analysis of the location, amount, and sufficiency of groundwater pumped by the urban water supplier for the past five years. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records. [¶] (4) A detailed description and analysis of the amount and location of groundwater that is projected to be pumped by the urban water supplier. The description and analysis shall be based on information that is reasonably available, including, but not limited to, historic use records. [¶] (c)(1) Describe the reliability of the water supply and vulnerability to seasonal or climatic shortage, to the extent practicable, and provide data for each of the following: [¶] (A) An average water year. [¶] (B) A single-dry water year. [¶] (C) Multiple-dry water years. [¶] (2) For any water source that may not be available at a consistent level of use, given specific legal, environmental, water quality, or climatic factors, describe plans to supplement or replace that source with alternative sources or water demand management measures, to the extent practicable. [¶] (d) Describe the opportunities for exchanges or transfers of water on a short-term or long-term basis. [¶] (e)(1) Quantify, to the extent records are available,

40; *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1, 8.) The in-depth information and analysis created by an urban water management plan far exceeds that required by the Development Monitoring System.

The first urban water management plan was published in November 2005 for the: Castaic Lake Water Agency; the Castaic Lake Water Agency Santa Clarita Water Division; Newhall County Water District; and the Valencia Water Company. The 2005 urban water management plan was prepared by: Black & Veatch; Nancy Clemm; Kennedy/Jenks Consultants; Jeff Lambert; Luhdorff & Scalmanini Consulting Engineers; Reiter/Lowery Consultants; and Richard Slade and Associates, L.L.C. The November 2005 urban water management plan is 435 pages in length. In 2011, the 2010 Urban Water Management Plan was prepared for: the Castaic Lake Water Agency; the Santa Clarita Water Division of the Castaic Lake Water Agency; the Newhall County Water District; and the Valencia Water Company. The 2011 urban water management plan 773-page report was prepared by Kennedy/Jenks Consultants, Ms. Clemm, professional engineer, Luhdorff & Scalmanini Consulting Engineers and Stacy Miller Public Affairs. The June 22, 2011 urban water management plan was certified by the Castaic Lake Water Agency directors board on June 22, 2011.

According to the environmental impact report, the Mission Village project is expected to generate a total water demand of 2,919 acre-feet per year. An acre-foot represents 43,560 cubic feet or 325,850 gallons of water. The projected water use is 1,676 acre-feet of potable and 1,243 acre-feet of non-potable water. The potable water demand will be met by the developer's rights to 7,038 acre-feet per year of groundwater from the Alluvial aquifer. The developer's water rights were used in 2011 to support

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past and current water use, over the same five-year increments described in subdivision (a), and projected water use, identifying the uses among water use sectors, including, but not necessarily limited to, all of the following uses: [¶] (A) Single-family residential. [¶] (B) Multifamily. [¶] (C) Commercial. [¶] (D) Industrial. [¶] (E) Institutional and governmental. [¶] (F) Landscape. [¶] (G) Sales to other agencies. [¶] (H) Saline water intrusion barriers, groundwater recharge, or conjunctive use, or any combination thereof. [¶] (I) Agricultural. [¶] (J) Distribution system water loss. [¶] (2) The water use projections shall be in the same five-year increments described in subdivision (a)."

existing agricultural irrigation needs. In terms of non-potable water demand, this requirement will be met through the use of recycled water from the developer's water reclamation plant. In addition, it is expected there will be a build-out of the developer's water reclamation plant occurring over time as the specific plan was implemented. The environmental impact report discusses the potentiality of an interruption in the supply of non-potable water from the developer's water reclamation plant. Under those circumstances, the demand for non-potable water will be met through the use of recycled water from the Valencia Water District's reclamation project. As a result, it is not expected there will be any significant environmental effects in terms of water availability. The environmental impact report concludes: "[An] adequate supply of water is available to serve the Mission Village project, and the project will not contribute to any significant cumulative water supply impacts in the Santa Clarita Valley, because it would rely on local groundwater and recycled water from local water reclamation plants and not use or rely on [Castaic Lake Water Agency State Water Project] supplies. No significant water supply . . . impacts are expected to result. . . ."

Sections 2 and 3 of the 2010 urban water management plan describes available resources for both potable and non-potable water. Included in the description of available resources is an analysis of: both recent, 1995-2009, and projected groundwater production, 2015-2050, for each water district; active municipal groundwater source capacity; and existing and planned groundwater pumping. Also, section 4 of the 2010 urban water management plan identifies in terms of non-potable supplies: existing wastewater treatment facilities; planned improvements and expansions; projected wastewater flows; projected wastewater generation for recycled water use for 2010 though 2050 for each water district; and recycled water demand. Further, the 2010 urban water management plan identifies in annual acreage feet the potential supplies and demands for all of the Newhall Ranch Project which includes the Mission Village project.

Moreover, in July 2010, the Valencia Water Company prepared a water supply assessment for the Mission Village project. The water assessment was prepared as

required by Water Code sections 10910[4] to 10912 and Government Code section 66473.7.[5] (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 433; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 283.) The Mission Village project is located in the Valencia Water

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[4] Water Code section 10910, subdivisions (a) and (b) provide: "(a) Any city or county that determines that a project, as defined in Section 10912, is subject to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) under Section 21080 of the Public Resources Code shall comply with this part. [¶] (b) The city or county, at the time that it determines whether an environmental impact report, a negative declaration, or a mitigated negative declaration is required for any project subject to the California Environmental Quality Act pursuant to Section 21080.1 of the Public Resources Code, shall identify any water system that is, or may become as a result of supplying water to the project identified pursuant to this subdivision, a public water system, as defined in Section 10912, that may supply water for the project. If the city or county is not able to identify any public water system that may supply water for the project, the city or county shall prepare the water assessment required by this part after consulting with any entity serving domestic water supplies whose service area includes the project site, the local agency formation commission, and any public water system adjacent to the project site." All future statutory references, unless otherwise indicated are to the Public Resources Code.

[5] Government Code section 66473.7, subdivision (a)(2) defines "sufficient water supply" as follows: "'Sufficient water supply' means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection that will meet the projected demand associated with the proposed subdivision, in addition to existing and planned future uses, including, but not limited to, agricultural and industrial uses. In determining 'sufficient water supply,' all of the following factors shall be considered: [¶] (A) The availability of water supplies over a historical record of at least 20 years. [¶] (B) The applicability of an urban water shortage contingency analysis prepared pursuant to Section 10632 of the Water Code that includes actions to be undertaken by the public water system in response to water supply shortages. [¶] (C) The reduction in water supply allocated to a specific water use sector pursuant to a resolution or ordinance adopted, or a contract entered into, by the public water system, as long as that resolution, ordinance, or contract does not conflict with Section 354 of the Water Code. [¶] (D) The amount of water that the water supplier can reasonably rely on receiving from other water supply projects, such as conjunctive use, reclaimed water, water conservation, and water transfer, including programs identified under federal, state, and local water initiatives such as CALFED and Colorado River tentative agreements, to the extent that these water supplies meet the criteria of subdivision (d)."

Company service area. The county had requested preparation of the revised water supply assessment.

The updated assessment's purpose is as follows: "The purpose of this [water supply assessment] is to provide the [c]ounty with an analysis of whether Valencia's water system has sufficient projected water supplies to meet the demands of the project, in addition to existing and planned future uses in the Santa Clarita Valley. Specifically, this [water supply assessment] evaluates whether the total projected water supply determined to be available during normal, single dry, and multiple dry water years over the next 25 years, will meet the projected water demand associated with the project, in addition to Valencia's existing and planned future water uses, including agriculture and manufacturing uses. If the water supply is anticipated to be insufficient, the [water supply assessment] must describe measures being taken to obtain an adequate supply. The [water supply assessment] is required to be included in the [e]nvironmental [i]mpact [r]eport . . . prepared by the [c]ounty for the project pursuant to [the California Environmental Quality Act]." (Fns. omitted.) The 2010 water supply assessment identifies with specificity sources for both potable and non-potable water. The 2010 water supply assessment charts in detail: current and planned supplies and banking programs; projected average or normal year supplies and demands; and anticipated supplies and demands for single and multiple dry years. The 2010 water supply assessment concludes, "Valencia Water Company's total projected water supplies will meet the projected water demands associated with the Mission Village project in combination with existing and other planned uses within the Valencia[] service area." The environmental impact report relies on both the 2005 and 2010 urban water management plans and the 2010 water supply assessment.

The environmental impact report utilizes the Development Monitoring System Build-Out Scenario in evaluating water demand and supply. The environmental impact report assesses the Mission Village project's consistency with the general plan Development Monitoring System's requirements. The environmental impact report explains the Development Monitoring System's goals and why they were satisfied by the

water analysis. The environmental impact report concludes, "Based on the information provided in this analysis, the Mission Village project is consistent with the [g]eneral [p]lan [Development Monitoring System] policies as they relate to water supplies."

We now apply the aforementioned deferential standard of review to the issue preserved for appellate review—whether the water capacity analysis complies with the Development Monitoring System. The environmental impact report relies on past and current analysis concerning water supplies. The 2005 and 2010 urban water management plans and July 2010 Valencia Water Company water supply assessment constitute substantial evidence sufficient water supplies exist for the Mission Village project. Further, the use of the Development Monitoring System Build-Out Scenario provided the supervisors board with sufficient data to: assess the availability and development costs of water services and facilities; ensure the developer pays the expansion costs; assure that water supplies will meet future growth; and assure that development occurs near existing water supplies. These are matters identified in the supervisors board April 21, 1987 resolution adopting the Development Monitoring System. The environmental impact report reflects that Development Monitoring System Build-Out Scenario permitted the supervisors board to make an intelligent land use decision concerning potable and non-potable water supplies. Under the deferential standard of review we must apply, we conclude the approval of the tract map was conducted in compliance with the county's general plan. (See part III(D), *ante*, at pp. 10-12.)

Two final comments are in order concerning water-supply analysis. To begin with, there is no merit to plaintiffs' contention that the Valencia Water Company may not be entitled to use water to serve the Mission Village project. We agree with defendants and the developer that plaintiffs' argument is speculative. In any event, the environmental impact report explains: there is no dispute between the developer and Valencia Water Company as to the right to use ground water; the Valencia Water Company has appropriative water rights; and there is sufficient evidence the Mission Village project's potable water demands will be satisfied by ground water pumped from the Alluvial aquifer. Plaintiffs' speculative assertions regarding uncertainty as to the

right to use water have no merit. Finally, there is no merit to plaintiffs' contention that current water supply information was not utilized by the supervisors board. The two urban water management plan and water assessment reports are based on current data.

G. Sewage and Wastewater Issues

1. Initial study

Plaintiffs argue, as they did in connection with water supply issues, that defendants failed to properly analyze sewer service availability under the Development Monitoring System. Plaintiffs argue the initial study fails to adequately analyze sewer services availability in compliance with the Development Monitoring System. However, the first amended complaint contains no allegations concerning sewer supply deficiencies in the initial study. The only direct reference to sewers in plaintiffs' issues statement filed in the trial court is: "The Newhall Ranch Specific Plan requires wastewater from the [p]roject to be treated at an on-site treatment plant, but the [p]roject's wastewater will be treated at the distant Valencia Water Reclamation Plant. Is the [p]roject consistent with the [s]pecific [p]lan?" Further, plaintiffs' opening brief filed in the trial court makes no mention of any deficiencies in the analysis concerning sewer services in the initial study. As in connection with the water supply issues, plaintiffs have forfeited any sewer capacity-related contention concerning the initial study's compliance with the Development Monitoring System. (*Citizens Opposing a Dangerous Environment v. County of Kern, supra*, 228 Cal.App.4th at p. 380, fn. 16; *A Local & Regional Monitor v. City of Los Angeles, supra*, 12 Cal.App.4th at p. 1804.)

2. environmental impact report

As noted, plaintiffs are not contending the environmental impact report fails to adequately discuss sewer-related issues as required by the California Environmental

Quality Act. Rather, plaintiffs argue that the environmental impact report demonstrates defendants did not comply with the Development Monitoring System. In plaintiffs' view, the failure to properly comply with the Development Monitoring Systems' requirements, which are part of the general plan, prohibited approval of the tract map application.

There is substantial evidence defendants complied with the Development Monitoring System's requirements for analysis in an environmental document. The Development Monitoring System imposes the following requirements below the heading "Sanitation Districts": "The planning agency shall determine if a project will be provided with an acceptable level of sewage disposal and shall base its determination upon the following Summary Reference Manual data: [¶] a. The current sewage discharge (in gallons per day) within the district's boundaries; [¶] b. The current treatment capacity of the sanitation district (in gallons per day); [¶] c. The deficit or surplus associated with the sanitation district, calculated by determining the difference between capacity and usage; [¶] d. The average discharge of sewage on a per unit basis, applicable to new development; [¶] e. The programmed schedule of the sanitation district to expand its capacity in the future; [¶] f. The estimated expansion costs of future construction; and [¶] g. The ultimate site capacity."

There is substantial evidence identified in the environmental impact report to meet the Development Monitoring System requirement that the project will provide an "acceptable level" of sewage disposal. Based upon projections by the Santa Clarita Valley Sanitation District, with the planned construction of the Newhall Ranch Water Reclamation Plant, wastewater disposal impacts would be less than significant. We turn now to the data requirements imposed by the Development Monitoring System in the wastewater context identified in the immediately preceding paragraph.

First, because the Mission Village site is undeveloped, there is no wastewater discharge, collection and conveyance at present. Second, as required by the specific plan, a new sanitation district treatment was formed. The new district, the Newhall Ranch County Sanitation District, will provide wastewater services for the specific plan area including the Mission Village project.

Third, the capacity of the Newhall Ranch Water Reclamation Plant, when completed, will be 6.8 million gallons per day. The maximum flow for the Newhall Ranch Water Reclamation Plant will be 13.8 million gallons per day of wastewater. The Mission Village project is expected to "generate a worst-case average total" of 0.96 million gallons per day of wastewater. Of the total Mission Village wastewater production, approximately 0.695 million gallons per day will be treated at the Newhall Ranch Water Reclamation Plant. The remaining 0.266 million gallons per day will be permanently treated at the Valencia Water Reclamation Plant. This will occur pursuant to conditions in a Joint Sewerage Services Agreement which will be executed between the Newhall Ranch County Sanitation and Santa Clarita Valley Sanitation Districts. In the near term, during the Newhall Ranch Water Reclamation Plant's construction, it will be necessary to use a Santa Clarita Valley Sanitation District water reclamation plant. Wastewater will be pumped to the Valencia Water Reclamation Plant and treated there. The environmental impact report explains that the Santa Clarita Valley Sanitation District reclamation plant has sufficient capacity to handle the short-term discharge of water from the Mission Village project. The environmental impact report explains why it is necessary to temporarily utilize the Santa Clarita Valley Sanitation District reclamation plant: "[T]he temporary treatment of wastewater at the existing Valencia [Water Reclamation Plant] is a practical engineering decision based on the need to build up an adequate, steady flow of wastewater before starting up the Newhall Ranch [Water Reclamation Project]. Such an approach would match the slower pace of the development, but would not eliminate the [s]pecific [p]lan requirement for construction of the Newhall Branch [Water Reclamation Project]." All costs incurred in connecting wastewater flows to the Valencia Water Reclamation Plant will be borne by the developer.

Fourth, the environmental impact report describes the projected wastewater generation for the Mission Village project on a gallons per day calculation for: single-family dwelling units; multi-family dwelling units; commercial retail uses; and the elementary school. Fifth, the environmental impact report describes the scheduled staged

expansion of water treatment facilities including construction of the Newhall Ranch Water Reclamation Plant. Sixth, there will be no public costs incurred in the construction of the Newhall Ranch Water Reclamation Plant. Those costs will be incurred by the developer. In addition, the costs of sending to and treating wastewater at the Valencia Water Reclamation Plant will be borne by the developer. Seventh, the ultimate site capacity is set forth in the environmental impact report. As noted, the Newhall Ranch Water Reclamation Plant has a capacity of 6.8 million gallons per day. The maximum flow of the Newhall Ranch Water Reclamation Plant is 13.8 million gallons per day. Finally, the environmental impact report discusses the application of the Development Monitoring System Buildout Scenario. When we apply the deferential standard of review for evaluating consistency with the general plan, we conclude the wastewater analysis comports with the Development Monitoring System requirements. (See part III(D), *ante*, at pp. 10-12.) We need not discuss the parties' remaining contentions concerning the Development Monitoring System.

IV. SEDIMENT ANALYSIS

A. Plaintiffs' Contentions

Plaintiffs argue the environmental impact report sediment analysis is flawed and fails to engage in a good faith investigation and disclosure of the project's relevant ecological effects. Plaintiffs argue the environmental impact report improperly assessed the reduction of sediment flowing from the project area into the Santa Clara River. This sediment reduction in turn impacts downstream riparian vegetation and replenishment of sand on Ventura County beaches.

Plaintiff raises two specific contentions concerning the sediment issues. To begin with, plaintiffs argue that defendants relied on an erroneous "sediment yield" analysis given the totality of the evidence. According to plaintiffs, the erroneous sediment yield analysis discussion contravenes the requirement that the environmental impact report

constitute a sufficient informational document. And in a slightly different vein, plaintiffs argue defendants relied on a on a grossly erroneous sediment rate. In plaintiffs' view, the reliance on the grossly erroneous sediment rate violates the requirement that the environmental impact report serve as an adequate informational document. Further, plaintiffs contend that this defect resulted in the environmental impact report not reflecting an accurate baseline of pre-project conditions.

B. Exhaustion of Administrative Remedies

Defendants and the developer argue that plaintiffs failed to fairly raise the sediment yield and rate contentions prior to the public hearing which preceded environmental impact report certification. As a result, defendants argue the sediment yield and rate contentions as they relate to the Mission Village project could not be raised in the mandate petition. Although the issue is close, we agree with defendants and the developer.

We apply the following standards to defendants' exhaustion of administrative remedies contention: "'"'No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance . . . were presented to the public agency orally or in writing . . . ." (§ 21177, subd. (a).)' (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535 (*Sierra Club*).) '"The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review."' (*Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1138 (*Evans*), quoting *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198.) Comments must express concerns so the lead agency has '"'"'its opportunity to act and to render litigation unnecessary."'"' (*Sierra Club*, *supra*, 163 Cal.App.4th at p. 535.) 'The purposes of the doctrine are not satisfied if the objections are not sufficiently specific so as to allow the Agency the opportunity to evaluate and respond to them.' (*Evans*, *supra*, 128 Cal.App.4th at p. 1138.) '"'[R]elatively . . . bland and general references to

environmental matters' [ ], or 'isolated and unelaborated comment[s]'"' do not satisfy the exhaustion requirement. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 527[].) Rather, '"[t]he 'exact issue' must have been presented to the administrative agency. . . ."' (*Sierra Club, supra,* 163 Cal.App.4th at p. 535.) Requiring anything less 'would enable litigants to narrow, obscure, or even omit their arguments before the final administrative authority because they could possibly obtain a more favorable decision from a trial court.' (*Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 594.) [¶] Exhaustion of administrative remedies is a 'jurisdictional prerequisite.' (*California Native Plant Society v. City of Rancho Cordova*[, *supra,*] 172 Cal.App.4th [at p.] 615[].) The petitioner has the burden of proof to show exhaustion occurred. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909 [].) Inasmuch as the issue of exhaustion is a question of law, '[a]n appellate court employs a de novo standard of review when determining whether the exhaustion of administrative remedies doctrine applies.' (*Sierra Club, supra*, 163 Cal.App.4th at p. 536.)" (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 623-624 (*North Coast*).) We recognize there are varying levels of specificity adverted to in Court of Appeal opinions. (See 2 Kostka & Zischke, *op.cit.*, § 23.98, pp. 23-107 to 23-112.) However, as we will explain, the issues raised largely in connection with other projects, did not fairly apprise defendants about concerns concerning sediment yield and rate for the Mission Village Project.

Defendants provided for two public comment periods which extended from October 8, 2010 to January 4, 2011. The supervisors board held a public hearing on October 25, 2011. In order for there to be a proper exhaustion of administrative remedies, it was necessary for the sediment yield and rate contentions to be raised prior to the conclusion of the October 25, 2011 supervisors board hearing. (§ 21167, subd. (a); *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535-537.)

In the trial court, plaintiffs initially relied on a May 12, 2012 letter. That letter post-dated the October 25, 2011 supervisors board hearing. Hence, it cannot be relied

upon as evidence of exhaustion of administrative remedies. However, plaintiffs, in their reply brief filed in the trial court, also relied on: a November 1, 2010 letter from Ron Bottorff, chair of the Friends of the Santa Clara River; a January 3, 2011 e-mail from Mr. Bottorff; an October 23, 2011 e-mail from Barbara Wampole, vice chair of the Friends of the Santa Clara River; and an October 24, 2011 letter from Paul Edelman with the Santa Monica Mountains Conservancy. Attached to these letters and e-mails were other documents.

None of the foregoing communications fairly apprised defendants of the alleged erroneous sediment yield and rate contentions as it relates to the Mission Village Project. Mr. Bottorff's November 1, 2010 letter comments on the draft environmental impact report for the Mission Village project. At no time did Mr. Bottorff's letter challenge the Mission Village project sediment yield and rate computations. In a similar vein, Mr. Bottorff's January 3, 2011 e-mail challenged the Mission Village project environmental impact report. The January 3, 2011 e-mail adverts to the Newhall Ranch Resource Management and Development Plan environmental impact statement/environmental impact report. No doubt, there is a reference to the Mission Village draft environmental impact report. However, none of the comments discussed in Mr. Bottorff's January 3, 2011 e-mail relate to the sediment yield and rate calculations appearing in the Mission Village environmental impact report.

Further, Ms. Wampole's October 21, 2011 e-mail references written comments by Peter S. Brand, senior project manager with the California State Coastal Conservancy. However, the comments are directed at the Newhall Ranch Resource Management and Development Plan final environmental impact statement/environmental impact report. The comments are directed to the United States Army Corps of Engineers (the engineers corps). The engineers corps was responsible for preparation of the Newhall Ranch Resource Management and Development Plan environmental impact statement.

Finally, as to Mr. Edelman's October 24, 2011 letter, it attaches a November 8, 2010 letter from the Santa Monica Mountains Conservancy concerning the Mission Village draft environmental impact report. Additionally, Mr. Edelman's letter attaches a

technical memorandum dated August 16, 2011 concerning the Newhall Ranch Resource Management and Development Plan final environmental impact statement/environmental impact report. Although Mr. Edelman's letter adverts to assumptions about erosion and sedimentation rates, it does so in the context of the two attached letters. Neither Mr. Edelman's nor the two attached letters assert the Mission Village environmental impact report miscalculated the sediment yield and rate calculations in a manner raised in the trial court.

From the foregoing, we conclude the following. To begin with, the exhaustion of administrative remedies issue is close. Virtually all of the comments involve either the Newhall Ranch Resource Management and Development Plan final environmental impact statement/environmental impact report or the Landmark Village draft environmental impact report. There are generalized assertions in Mr. Edelman's October 24, 2011 letter about erosiveness and sedimentation rates. However, the specific sediment rate and yield contentions concerning the Mission Village environmental impact report raised in the trial court were not presented in any public comment period papers. None of public comment period letters and e-mails assert the Mission Village environmental impact report fails to make a good faith effort to discuss the sediment yields and rates. And the comment period documents never raise any issue concerning the Mission Village environmental impact report baseline analysis. Thus, plaintiffs have failed to exhaust their administrative remedies in connection with their sediment yield and rate contentions. (*California Native Plant Society v. City of Rancho Cordova, supra,* 172 Cal.App.4th at pp. 615-619; *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 894-895 disapproved on another point in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 539.)

C. Standards of Review

The gravamen of plaintiffs' contentions is the environmental impact report's sediment impacts discussion is flawed and fails to meet statutorily required requirements

for good-faith investigation and disclosure. An environmental impact report's fundamental purpose is to inform public officials and the people they serve of any significant adverse effects a project is likely to have on the environment. (§ 21061; *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 447; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 428.) We presume the correctness of defendant's decisions in the environmental impact report context. (*San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 11; *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 723.) Our Supreme Court has described the limited nature of our review: "In reviewing agency actions under [the California Environmental Quality Act], . . . section 21168.5 provides that a court's inquiry 'shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.'" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; see *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 195.)

Thus, our standard of review depends upon the nature of the challenge to an environmental impact report: "In evaluating an [environmental impact report] for [California Environmental Quality Act] compliance, then, a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. For example, where an agency failed to require an applicant to provide certain information mandated by [the California Environmental Quality Act] and to include that information in its environmental analysis, we held the agency 'failed to proceed in the manner prescribed by [the California Environmental Quality Act].' (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236; see also *Santiago County Water Dist. v. County of Orange* [(1981)] 118 Cal.App.3d [818], 829 [environmental impact report] legally inadequate because of lack of water supply and facilities analysis].) In contrast, in a factual dispute over 'whether adverse effects have been mitigated or could be better mitigated' (*Laurel*

Heights [*Improvement Assn. v. Regents of University of California* (1988)] 47 Cal.3d [376,] 393), the agency's conclusion would be reviewed only for substantial evidence." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 435.)

In terms of the correctness of defendants' environmental conclusions, our Supreme Court has explained: "Thus, the reviewing court '"does not pass upon the correctness of the [environmental impact report's] environmental conclusions, but only upon its sufficiency as an informative document."' [Citations.] We may not set aside an agency's approval of an [environmental impact report] on the ground that an opposite conclusion would have been equally or more reasonable." (*Citizens of Goleta Valley v. Board of Supervisors, supra,* 52 Cal.3d at p. 564, quoting *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 392 and *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189.) In a similar vein, our Supreme Court has explained: "'A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so.'" (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 574 citing *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393.) Thus, we defer to defendants' resolution of conflicting opinions and evidence. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 572; accord, *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1042.)

D. The Environmental Impact Report Analysis and Supporting Engineering Data

1. Ventura County beaches

The environmental impact report engages in a comprehensive discussion of the sediment issue as it relates to the Ventura County beaches. Discussion concerning the risks of reduced sediment flows on Ventura County beaches appears in the following portions of the environmental impact report: section 4.2, Hydrology; section 4.21, Floodplain Modifications; and section 4.22, Water Quality. The Water Quality portion of the environmental impact report describes the anticipated change in the project site: "The Mission Village tract map site presently consists of open space, agriculture, and oil and gas extraction wells with associated access roads, and runoff is conveyed via natural drainages and existing concrete channels to ultimately discharge to the Santa Clara River. Construction and operation of the Mission Village project would replace open space, agricultural land, and extraction well pad runoff with urban runoff."

There are two ways that the urban runoff/sediment impacts may create detrimental ecological effects. The first is the project may trap sediment and prevent it from entering the river. The second is the project may increase the amount of discharge and alter the river's geomorphic nature. (We will discuss this second potential problem—hydromodification—shortly.) The Floodplain Modifications portion of the environmental impact report describes the potential adverse ecological impact of the project trapping sediment: "For the purposes of this analysis, the Mission Village project would also result in a significant impact if it would: [¶] . . . substantially reduce the amount of sediment delivered to the Ventura County beaches." The environmental impact report concludes the project will not significantly impact Ventura County beaches, "Implementation of the Mission Village project would not result in a substantial reduction in sediment supplies that are transported to the Santa Clara River and would not result in a significant impact to Ventura County beaches."

Before summarizing the discussion that supports this conclusion, it is appropriate to identify the scientific reports which serve as basis for defendants' findings. The environmental impact report's identifies its Floodplain Modifications source documents thusly: "The analysis presented in this section is based on numerous source documents, including the Flood Technical Report for Mission Village, February 2007, prepared by Pacific Advanced Civil Engineering, Inc. []; Assessment of Potential Impacts Resulting from Cumulative Hydromodification Effects, Selected Reaches of the Santa Clara River, Los Angeles County, California (October 2005), prepared by Balance Hydrologics; Phase 1 Fluvial Study (2006a) and Phase 2 Fluvial Study (2008), prepared by [Pacific Advanced Civil Engineering, Inc.]; Newhall Ranch Tributary Channel Design Guidelines (November 2008), prepared by Philip Williams and Associates []; and Newhall Ranch Specific Plan Sub-Regional Stormwater Mitigation Plan (SWMP), (April 2008), prepared by Geosyntec Consultants, Inc. []." The Balance Hydrologics reports were prepared by Scott Brown, a California certified hydrologist and Barry Hecht, a certified engineering geologist. The 2007 Pacific Advanced Civil Engineering, Inc. report references 20 additional studies used in making its calculations. The contact persons for the Pacific Advanced Civil Engineering, Inc. report are Dr. David Jaffe and Mark Krebs, both of whom are professional engineers. The Philip Williams and Associates channel design analysis references 11 studies and the use of the engineer corps Hydrologic Engineering Center River Analysis System. The Geosyntec Consultants, Inc. stormwater mitigation plan study consists of 603 pages and references 91 studies.

The Hydrology section discussion relies on the 113-page drainage report prepared by registered civil engineer Matthew G. Heideman with the PSOMAS firm. Mr. Heideman relies on six different references. In addition, the environmental impact report Hydrology section discussion relies on 11 other environmental studies and documents. The environmental impact report's Water Quality discussion relies on: 2008, 2010 and 2011 studies prepared by Geosyntec Consultants; a county public works department manual storm drain systems; 2006 and 2007 Pacific Advanced Civil Engineering, Inc. reports; the 2005 Balance Hydrologics, Inc. report; a 2003 revised analysis on the Santa

Clara River habitats; recognized stormwater databases and guides for best management practices; the Environmental Protection Agency Green Streets practices; and other technical reports. It is based on these technical studies that the environmental impact report reaches its conclusions concerning sediment runoff and the Ventura County beaches.

The environmental impact report's Floodplain Modifications analysis concludes there is no significant impact on sediment transport: "The effects of the Mission Village project on beach replenishment is a function of the sediment load delivered from the project site. A reduction of area subject to erosion due to the buildout of the proposed project could result in a corresponding reduction in floodwater sediment. [¶] The component of the proposed project that would have the most effect on sediment supply is the conversion of tributary drainages to buried storm drain. For this analysis, it is assumed that the area converted to buried storm drain results in a net loss of sediment supplied by the affected area. As described above, approximately 3,451 tons of sediment originate from the Mission Village tract map site and are transported to the Santa Clara River. This is less than one-tenth of 1 percent (0.085 percent) of the sediment supply delivered by the river each year. Based on this analysis, the reduction of sediment delivered to Ventura County beaches due to the proposed project would not be substantial and would result in a less than significant impact." The environmental impact report explains that the tract map site encompasses approximately 1.97 square miles. The 1.97 square mile Mission Village site is thus an infinitesimal portion of the 1,634 square mile Santa Clara River watershed. Stated differently, the Santa Clara River watershed in the specific plan site encompasses 644-square miles. The Mission Village tract map site contains only 1.97 square miles or .31 percent of the Santa Clara River watershed in the specific plan area.

Further, the Santa Clara River is not the only source of beach sand. The Santa Clara River produces only 60 per cent of Ventura County beach sand. The remainder comes from the Ventura River, 10 per cent, and beaches to the north, 30 per cent. And the addition of new sand is seasonal and episodic. According to the Floodplain

Modifications discussion: "The Santa Clara River exports an estimated 4.08 million tons per year from its mouth into the Santa Barbara Channel. The addition of new sand to the beaches is seasonal, occurring during rainy periods when the rivers' flow and sediments are washed into the ocean. The Santa Clara River is capable of depositing large quantities of sand during floods, but very little during dry years. For example, 52.4 million tons of sediment were discharged during the 1969 floods . . . ." The environmental impact report's Floodplains Modification section explains that the project site generates 3,451 tons of sediment yearly. This is less than one-tenth of one percent, 0.085 percent, of the sediment supply delivered on an annualized basis by the Santa Clara River to the Santa Barbara Channel.

To further illustrate Mission Village's minimal impact on beach sand, the Santa Clara River's base flow is principally from other sources. The principal sources of water contributing to the base flow are: groundwater from the Los Angeles County Alluvial aquifer basin; tertiary-treated wastewater from two water treatment plants; and in some years, a Department of Water Resources release from Castaic Lake into Castaic Creek during winter and spring months. Moreover, the principal Santa Clara River tributaries are Castaic, Bouquet Canyon, San Francisquito and Placerita Creeks. The South Fork of the Santa Clara River receives waters from the Placerita Creek.

To additionally demonstrate the tiny impact on beach sand, there are six drainages in the project area—Lion, Exxon, Dead-End, Unnamed D, Middle and Magic Mountain Canyons. The environmental impact report characterizes the drainage from Dead-End, Unnamed D, Middle and Magic Mountain Canyons as minor. The existing Magic Mountain Canyon watershed already drains into a concrete channel through the adjoining theme park. Only 27 per cent of the 1.32 square mile, 847-acre, Magic Mountain Canyon watershed is within the specific plan area. The Middle Canyon watershed encompasses 0.53 square miles, 272 acres and 20 percent of it is outside the specific plan area. The only area in the Mission Village site where there are any significant sediment flows is in Lion Canyon.

The Floodplain Modifications discussion states the primary or major Santa Clara River watershed located within the Mission Village tract map site is Lion Canyon, which consists of 0.8 square miles. As can be noted, the drainage from the Lion Canyon area of 0.8 mile is a small percentage of the 1,634-square-mile Santa Clara River basin watershed. And only 48 percent of the watershed area is actually located inside the Mission Village tract map site. Currently, the Lion Canyon area is used for cattle grazing and oil production. Portions of the channel that flow through Lion Canyon are undersized and transport-limited. According to the 2007 analysis conducted by Paul Williams and Associates, post-development condition sediment supplies to the Lion Canyon drainage are predicted to range from 27 to 37 per cent below pre-project conditions.

The environmental impact report concludes that *absent mitigation*, erosion and sedimentation impacts "within Lion Canyon" will be significant. But the environmental impact report describes why the adverse impacts within the Lion Canyon watershed will be mitigated to a point of insignificance. According to the environmental impact report: "The [specific plan environmental impact report] identified feasible measures to reduce the effects of the [s]pecific [p]lan on floodplains within the [p]roject area. Specifically, Mitigation Measures SP-4.2-1 through SP-4.2-7 (flood control improvement approval from [the Los Angeles County Department of Public Works], state and federal permits, [California Department of Fish and Game] stream bed agreements, [Federal Emergency Management Agency Conditional Letters of Map Revision], [Los Angeles County Department of Public Works] plan and map approvals, [Los Angeles County Department of Public Works]-approved permanent erosion controls, [Los Angeles County Department of Public Works Standard Urban Stormwater Mitigation Plan] and [Storm Water Pollution Prevention Plan] requirements) are incorporated to reduce these impacts. In addition, Mitigation Measures MV 4.21-1 through MV 4.21-6 ([Los Angeles County Department of Public Works] required runoff controls, minimization of bridge and structures, structural durability, hydromodification controls and channel design, sediment and debris control facilities, sediment redistribution) would further reduce these impacts

by controlling runoff and sediment delivered through the project reach, minimizing localized impacts from bridge crossings, using erosion resistant materials to ensure the long-term stability of drainage structures, and ensuring that the Project design provides an equilibrium slope in the post-development condition. Finally, to ensure that the channel functions as intended, Mitigation Measure MV 4.21-6 describes the Geomorphology Monitoring and Management Plan that would be implemented to evaluate compliance with the basis of the design criteria, the triggers for implementing remedial actions (if necessary), the approach for implementing remedial actions, and a description of potential remedial measures. Incorporation and implementation of proper design, regulatory compliance, facility maintenance, and specified mitigation measures would reduce the impact of erosion and/or downstream deposition to a less-than-significant level." These planning controls are designed to eliminate significant impacts merely within Lion Canyon, a tiny portion of the 1,634-square-mile Santa Clara River basin watershed. And as noted, Lion Canyon is the only part of the project area which produces sediment of any consequence.

Putting aside the virtually nonexistent actual effect on beach sand development, urbanization and development in the Santa Clara River valley has little impact on its morphology. The environmental impact report discusses and accepts the October 2005 Balance Hydrologics, Inc. analysis. The October 2005 Balance Hydrologics, Inc. report was prepared by Mr. Brown, a hydrologist and geomorphologist, and Mr. Hecht, a certified engineering geologist and hydrologist. According to the October 2005 Balance Hydrologics, Inc. report, upriver development will have no significant effects on the river's morphology. The report bases this conclusion on: historic aerial photographs which show upriver changes, including dam construction, have not affected its geomorphic expression; large events such as stormwater peaks, which are called re-set events, because they change the river's geomorphic expression, are the dominant force in defining channel characteristics; the re-set events are so dramatic that they buffer changes that may occur during short-term sediment transport; and the increase from four to nine

percent in the urban area would not have a significant geomorphic impact on the Santa Clara River mainstream.

In addition, the environmental impact report synthesizes and accepts the Fluvial Study in the Pacific Advanced Civil Engineering, Inc. report. The extensive 248-page Pacific Advanced Civil Engineering, Inc. report describing the river's morphology was prepared by three licensed Professional Engineers, Mr. Krebs, Mr. Phillips and Dr. Jaffe. That report concludes, "It is expected that various Newhall related impacts will be localized, and, with respect to implementation of the proposed improvements, that the [Santa Clara] River will continue to behave fluvially as it did prior to construction of these proposed improvements." The foregoing analysis, which comes from multiple engineering sources, constitutes substantial evidence which supports defendants' no significant impact finding in terms of Ventura County beaches. We may not reweigh the conflicting evidence and inferences relied upon by plaintiffs. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 572; *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393.)

2. Hydromodification

The issue raised by plaintiff relates to hydromodification which is described in the environmental impact report's Water Quality section thusly: "Urbanization modifies natural watershed and stream hydrologic and geomorphic processes by introducing increased volumes and duration of flow via increased runoff from impervious surfaces and drainage infrastructure. . . . Potential changes to the hydrologic regime may include increased runoff volumes, frequency of runoff events, long-term cumulative duration, as well as increased peak flows. Urbanization may also introduce dry weather flows where only wet weather flows existed prior to development. These changes are referred to as 'hydromodification.' [¶] Hydromodification intensifies sediment transport and often leads to stream channel enlargement and loss of habitat and associated riparian species.

. . . A change to the project site's hydrologic regime would be considered a condition of concern if the change could have a significant impact on downstream natural channels and habitat integrity, alone or in conjunction with impacts of other projects." (Fn. omitted.) Hydromodification can also refer to physical alterations to drainage beds and banks.

The environmental impact report identifies threshold of significance based upon a review of the Municipal Separate Storm Sewer System Permit and Guidelines, Appendix G. The environmental impact report states: "Significant adverse impacts to natural drainage systems created by altered hydrologic conditions of concern are presumed to occur if the proposed project would: [¶] [] Substantially alter the existing drainage pattern of a natural drainage, stream, or river causing substantial erosion, siltation, or channel instability in a manner that substantially adversely affects beneficial uses; or [¶] [] Substantially increases the rates, velocities, frequencies, duration and/or seasonality of flows causing channel instability and harming sensitive habitats or species in natural drainages in a manner that substantially adversely affects beneficial uses."

Faced with these potential problems, the environmental impact report engages in extensive analysis of planning, development and mitigation measures envisioned for the Mission Village project. After review of scientific data and anticipated building practices which we shall summarize later, the environmental impact report concludes, "Based upon the above discussion, concluding that the project includes hydromodification controls as [project design features], that future development projects within the watershed would control flow in compliance with the regional program, and that large-scale changes naturally occur in the Santa Clara River in response to major episodic events, the project's contribution to cumulative hydromodification impacts to the Santa Clara River would be less than significant and consistent with the requirements of the [Municipal Separate Storm Sewer System] Permit." In terms of cumulative impacts, the environmental impact report concludes, "Because cumulative development would be subject to the same or similar required mitigation measures as the proposed project, no additional cumulative mitigation measures are proposed or required."

We now review the administrative record for substantial evidence to support these conclusions. To begin with, the Mission Village site represents only 1.97 square miles of the 1,634 square mile Santa Clara River watershed. Even after build-out of the Mission Village site, 685 acres of the project area would be the natural river corridor, open space or parks. Once completed, structural low impact development controls would be imposed upon approximately 96 per cent of the developed project area. The remaining four percent would be treated in media filters or by the use of best management practices. Relying on 2010 and 2011 Geosyntec, Inc. studies, the environmental impact report identifies each project drainage area and the low impact design and best management practices to mitigate hydromodification impacts. And, as explained by the environmental impact report, the Mission Village project is subject to the specific plan. The specific plan adopted mitigation monitoring measures specific to the Mission Village project site.

Further, the Mission Village project will utilize low impact development best management practices which seek to mimic predevelopment hydrologic conditions. The environmental impact report also refers to these design features and best management practices as progressive hydromodification control measures. The environmental impact report explains, "The primary goals of site design and [low impact development best management practices] are to maintain a landscape functionally equivalent to pre-development hydrologic conditions. . . ." Such best management practices, according to the environmental impact report, include: minimizing impervious areas by preserving open spaces; using permeable paving areas; reducing land coverage by building narrower and higher footprints and the like; dispersal of impervious areas; maximizing open space; utilization of the federal Environmental Protection Agency Green Streets Manual; minimizing the use of impervious materials; conserving natural areas; selecting appropriate building materials; minimizing directly connected impervious areas; and protecting slopes and channels. Using the low impact development best management practices, the project is designed to reduce the effective impervious area, which alters hydrologic conditions, to five percent of the total project area.

Also, we agree with defendants and the developer that the environmental impact report engaged in a thorough analysis of potential significant sediment impacts. The environmental impact report specifically examines: the relationship between urbanization and hydromodification; the effects of hydromodification on downstream ecological conditions; the effects of the project and parcel design features we have discussed which reduce the adverse influence of runoff from impervious surfaces in both dry and wet weather scenarios; and cumulative hydromodification effects. The environmental impact report assesses the absence of significant ecological effects in part based on the Santa Clara River studies by Balance Hydrologics, Inc. and Pacific Advanced Civil Engineering, Inc. The 39-page Balance Hydrologics, Inc. 2005 report consists of a historical and scientific analysis of the Santa Clara River. According to the Balance Hydrologics, Inc. report, upriver development will have no significant hydromodification effects. As noted, the report bases this conclusion on: historic aerial photographs which show upriver changes, including dam construction, have not affected its geomorphic expression; large events such as stormwater peaks, which are called re-set events, because they change the river's geomorphic expression, are the dominant force in defining channel characteristics; the re-set events are so dramatic that they buffer changes that may occur during short-term sediment transport; and the increase from four to nine percent in the urban area would not have a significant geomorphic impact on the Santa Clara River mainstream.

The 276-page Pacific Advanced Civil Engineering, Inc. report includes statistical and analytical appendices and analyzes: prior studies on sediment transport conducted by Sikand Engineering, Simons, Li & Associates, the United States Geological Survey and Allan E. Seward Engineering Inc.; the project site; the hydrology and fluvial mechanics of the Santa Clara River; historic flood data; and the effect of specific project aspects on erosion and other ecological factors. That report, after evaluating runoff from the Mission Village and mandated development requirements, concludes there will be no significant downriver impacts. The environmental impact report concludes based upon the Pacific Advanced Civil Engineering, Inc. report, "The fluvial analysis showed very

little change between the pre- and post-development conditions and, therefore, concluded there was no potential adverse impact to the fluvial mechanics of the river." This conclusion is consistent with the Balance Hydrologics, Inc. analysis that the Santa Clara River's morphology is historically unaffected by upriver development but by natural re-set events. The foregoing constitutes substantial evidence which supports defendants' no significant impact finding.

3. The 2007 Stillwater Sciences assessment and Table 4.21-2 in the environmental impact report.

In the Floodplain Modifications section of the environmental impact report, Table 4.21-2 provides an estimated annual sediment supply from tributaries located in the Mission Village project site. Under the column Approximate Sediment Supply, reference is made to a *2005* report prepared by Stillwater Sciences for the Santa Clara River watershed. Plaintiffs make the following argument in support of their erroneous annual sediment yield figure contention: "To calculate the average annual reduction of sediment delivered to the Santa Clara River channel and Ventura County beaches via Santa Clara River discharge to the Pacific Ocean, the [environmental impact report] utilizes an annual Santa Clara River watershed sediment export rate of 27,865,224 tons per year. The [environmental impact report] arrives at this figure by incorporating by reference a section of the [California Department of Fish and Game/engineer corps environmental impact report/environmental impact study] into the Mission Village environmental impact report that states: [¶] Stillwater [Sciences] estimated that approximately 27.87 million tons of sediment in total is exported to the Santa Barbara channel annually . . . [¶] This figure is erroneous and unsupported by the cited 2007 Stillwater [Sciences] Study." (Fns. omitted.) Plaintiffs then cite to a 2007 study entitled, "Assessment of Geomorphic Processes for the Santa Clara River Watershed, Ventura and Los Angeles counties, California." The 2007 report was prepared for The California Coastal Conservancy. The opening brief then cites to Table 6-2 of the 2007 Stillwater

Sciences report which is entitled, "Summary of sediment discharge estimates for the Santa Clara River." Table 6-2 of the 2007 Stillwater Sciences report then cites to six different studies of sediment discharge.

As can be noted, Table 4.21-2 in the environmental impact report relies upon a 2005 Stillwater Sciences estimate. We are not persuaded that an error occurred in Table 4.21-2 when the cited Stillwater Sciences report was promulgated in 2005. The 2007 Stillwater Sciences report identified in the opening brief is different from the one relied upon in Table 4.21-2 in the environmental impact report. The reply brief continues to cite to the 2007 Stillwater Sciences report. Plaintiffs have failed to sustain their burden of proving error in connection with reliance upon the 2005 report. (*In re Marriage of Bowen* (2001) 91 Cal.App.4th 1291, 1301; *In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 575.) In any event, the other documentation we have cited constitutes substantial evidence. As defendants and the developer argue, we are not permitted to reweigh the conflicting inferences presented in the administrative record. (*Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th at p. 572; *Citizens of Goleta Valley v. Board of Supervisors, supra*, 52 Cal.3d at p. 564.)

E. The Stillwater Sciences Report Authored by Glen Leverich and the Responsive Analysis of Others

Plaintiffs rely on an eight-page August 16, 2011 technical report prepared by Mr. Leverich, a Berkley, California Senior Geomorphologist/Geologist with Stillwater Sciences. Plaintiffs cite Mr. Leverich's report for the proposition that the cumulative reduction in watershed sediment yield is between 2.9 per cent and 4.58 per cent. Plaintiffs argue this cumulative reduction is greater than that specified in the environmental impact report.

The technical report was prepared as a comment for the final environmental impact statement/environmental impact report for another specific plan project. The project at issue was the Newhall Ranch Resource Management and Development Plan.

Mr. Leverich concluded that the sediment analysis in a draft of the Newhall Ranch Resource Management and Development Plan was inaccurate. Plaintiffs extrapolate from Mr. Leverich's analysis and challenge the conclusions in the Mission Village environmental impact report.

Mr. Leverich's analysis does not permit reversal. To begin with, the final environmental impact statement/environmental impact report for the Newhall Ranch Resource Management and Development Plan was certified. In the process leading up to its certification, Dr. Aaron Allen of the United States engineers corps responded to Mr. Leverich's technical report. Dr. Allen's response is contained in a memorandum to file. Dr. Allen has extensive experience in evaluating fluvial processes in arid and semi-arid areas and the Santa Clara River. That memorandum is part of the administrative record of the Mission Village certification process. Dr. Allen explains that Mr. Leverich had not reviewed: pertinent responses to comments during the Newhall Ranch Resource Management and Development Plan certification process; technical appendices to the final environmental impact statement/environmental impact report prepared during the Newhall Ranch Resource Management and Development Plan certification process; and the Balance Hydrologics, Inc. report. Further, Dr. Allen explains that Mr. Leverich was commenting on a project different from the one under consideration by the engineer corps. And, Dr. Allen notes that Mr. Leverich misunderstood the bank design for large portions of the Santa Clara River in the specific plan area.

In addition, the administrative record before defendants includes a 32-page response to Mr. Leverich's technical memorandum by a 5-person staff of Pacific Advanced Civil Engineering, Inc. The August 29, 2011 Pacific Advanced Civil Engineering, Inc. analysis responds to Mr. Leverich's eight-page August 16, 2011 technical report. Pacific Advanced Civil Engineering, Inc. team members have extensive experience in connection with issues relating to the Newhall Ranch area and the Santa Clara River. The response explains that Mr. Leverich "appear[ed]" to be unaware of seven separate documents promulgated in the Newhall Ranch Resource Management and Development Plan certification process. These seven documents were prepared by the

engineer corps and a consultant, Geosyntec Consultants. Additionally, the Pacific Advanced Civil Engineering, Inc. memorandum explains, "[Mr. Leverich] acknowledged that [he] did not review any of the technical appendices or modeling that formed the basis for the information provided in the Draft and Final [environmental impact statement/environmental impact report]."

Further, there is evidence Mr. Leverich's study was much less detailed than that conducted by the Pacific Advanced Civil Engineering, Inc. staff. The Pacific Advanced Civil Engineering, Inc. staff studied sediment transport/fluvial evaluation criteria for 20 sub-reaches of the Santa Clara River. Mr. Leverich studied only three. The Pacific Advanced Civil Engineering, Inc. staff applied sediment transport/fluvial evaluation criteria in 250 engineer corps Hydrologic Engineering Center River Analysis System model cross-sections. Mr. Leverich conducted less than 20, according to the Pacific Advanced Civil Engineering, Inc. staff. According to the Pacific Advanced Civil Engineering, Inc. staff, Mr. Leverich could not possibly evaluate any "deficiencies or discrepancies" in the Newhall Ranch Resource Management and Development Plan environmental documents. This is because Mr. Leverich had not read the technical analysis for the Newhall Ranch Resource Management and Development Plan environmental documents.

Also, the Pacific Advanced Civil Engineering, Inc. staff identifies Mission Village project-related changes in discharges at the Los Angeles and Ventura County lines. The Pacific Advanced Civil Engineering, Inc. staff conclusions is premised upon the following, "The assessment of the [Santa Clara] River hydrology for the proposed [Resource Management and Development Plan] [p]roject and alternatives was based on the 1994 joint Los Angeles County/Ventura County Hydrology Report, which has been accepted and adopted by both jurisdictions." The August 29, 2011 analysis concludes there will be no net change in the Santa Clara River discharge at the Los Angeles and Ventura County lines. The Pacific Advanced Civil Engineering, Inc. analysis extends over 2, 5, 10, 20, 50 and 100-year time frames. The Pacific Advanced Civil Engineering, Inc. staff then explains the extensive use of third party scientists and engineers to review

sediment delivery issues. The report notes that Drs. Andrew Collison and Jeffrey Haltiner have independently validated the October 2008 Pacific Advanced Civil Engineering, Inc. Phase 2 Fluvial Study. This was the study which was approved by the Los Angeles County Department of Public Works on November 25, 2008.

Further, the Mission Village administrative record includes an analysis provided to the supervisors board concerning Mr. Leverich's memorandum. The response was prepared in connection with the events leading up to the certification of the Landmark Village environmental impact report. The written discussion provided to the supervisors board reiterates prior responses to issues raised by environmental and other public groups during the comment period. Those comments indicate that the Mission Village project will not cause significant hydrological impacts downriver from the construction area. Also, the written analysis reiterates the conclusions of the Pacific Advanced Civil Engineering, Inc staff, the 2005 Balance Hydrologics report, and Dr. Allen. The supervisors board analysis reiterates the reset flood and large storm events impacts which affect the stability of local channel geomorphology and riparian vegetation discussed in the Balance Hydrologics, Inc. report.

The foregoing constitutes substantial evidence the Mission Village project will have no significant adverse hydromodification and sediment transport impacts. A wide array of credentialed scientists have reached this environmental conclusion after extensive research and collaboration. Moreover, as noted, Mr. Leverich's memorandum was prepared in connection with the Newhall Ranch Resource Management and Development Plan environmental impact report; not this project. There is evidence Mr. Leverich's conclusions were made without a thorough study of the technical data and knowledge of the then current proposed Newhall Ranch Resource Management and Development Plan project. And the Santa Clara River hydrology research conducted by scientists who collaboratively disagree with Mr. Leverich was more thorough than that performed by him. Further, the scientists disagreeing with Mr. Leverich are more experienced than he is in evaluating the hydromodification process in the Santa Clara River and its watershed. The administrative record contains a comprehensive fact-based

response to Mr. Leverich's argument. Defendants' conclusions, as expressed in the environmental impact report and related findings, are supported by substantial evidence. Under any standard of judicial review, the judgment must be affirmed. We need not discuss the parties' remaining contentions concerning the Santa Clara River.

V. FAILURE TO ANALYZE AND MITIGATE SUBSTANTIAL IMPACT ON THE SLENDER MARIPOSA LILY

A. Introduction

The slender mariposa lily, *Calochortus clavatus*, is a special status plant (a description we shall explain shortly) present in the Mission Village project area. The parties agree the Mission Village project will have a significant impact on the environment. Plaintiffs contend that the environmental impact report should not have been certified because the mitigation measures are: improperly deferred; vague; and ineffective. Defendants and the developer disagree. They rely on specific plan mitigation measures and mitigation measures 4.3-26 and 4.3 3-27.

The environmental impact classifies the slender mariposa lily as a "special status plant. The environmental impact report describes the slender mariposa lily and its growth in the project area thusly: "Slender mariposa lily . . . has no federal status. This species is typically found in chaparral, California's sagebrush scrub, and grasslands, often on clay and/or rocky soils. Populations of this species have been documented and mapped throughout the project site. The mapped acreage of this species on the Mission Village project site in 2003 was 9.68 acres, in 2004 was 6.63 acres, and in 2005 was 6.23 acres. In total (when the 2003-2005 data is unioned), slender mariposa lily occupies a cumulative footprint of 17.43 acres of the project site." (Fn. omitted.) The Mission Village project result in a loss of 15.3 acres of the 17.4 acres of cumulative occupied slender mariposa lily habitat. The environmental impact report correctly identifies these impacts as significant. The special status classification is based on the slender mariposa

lily's presence on List 1.B.2 of the California Native Plant Society Inventory of Rare and Endangered Plants of California. The environmental impact report describes the slender mariposa lily's endangered status, "[T]he slender mariposa lily discussed below is a [California Native Plant Society] List 1B.2 plant, meaning the [California Native Plant Society] has classified this species as being Rare, Threatened, or Endangered in California and elsewhere, and further, the threat classification means that the plant is fairly endangered in California." The slender mariposa lily is found in the southern San Gabriel Mountains and Liebre Mountains of eastern Los Angeles County. It is also found in the Santa Susana Mountains in western Los Angeles and Ventura counties. It occurs at elevations between about 360 and 1,000 meters.

B. Mitigation Measures 4.3-26 and 4.3-27

1. Overview

The environmental impact report contains mitigation strategies concerning the slender mariposa lily. The specific plan contains mitigation measures pertinent to the slender mariposa lily. The principal environmental impact report provisions concerning the slender mariposa lily are mitigation measures 4.3-26 and 4.3-27. Mitigation measure 4.3-27 adopts Revised Draft Resource Management and Development Plan Slender Mariposa Lily Mitigation and Monitoring Plan and requires it be implemented. For brevity's purpose, we will refer to the Revised Draft Resource Management and Development Plan Slender Mariposa Lily Mitigation and Monitoring Plan as the "revised mitigation plan." Mitigation measure 4.3-27 requires the revised mitigation plan be further revised and then submitted to the California Department of Fish and Game (fish and game department). Finally, mitigation measure 4.3-27 imposes specific requirements for the further revision of the revised mitigation plan. Plaintiffs' briefs fail to accurately identify the extent of the mitigation measures which apply to the slender mariposa lily. Given plaintiffs' arguments, it is appropriate to synthesize specific plan strategies for

alleviating adverse ecological impacts on the slender mariposa lily and mitigation measures 4.3-26 and 4.3-27.

2. Specific plan provisions

The specific plan contains several mitigation measures concerning special status species. For example, mitigation measures SP 4.6-53 and SP 4.6-59 require current site-specific surveys for special status species in consultation with the fish and game department. The environmental impact report's Special-Status Plant Species analysis identifies mitigation measures in the specific plan designed to enhance the survivability of the slender mariposa lily. Those mitigation measures include: enhancement of habitat values within the areas where management of the slender mariposa lily will occur; recreation and access restrictions within those areas; protection of transition areas between the development edge and the High Country special management area/significant ecological area where the new slender mariposa lily will occur; placement of clear markings for grading perimeters within or adjacent to the High Country special management area/significant ecological area; long-term management of the High Country special management area/significant ecological area; and the requirement of current and updated site-specific surveys for all special-status species including the High Country special management area/significant ecological area.

3. Revised mitigation plan

Mitigation measure 4.3-27 requires the revised mitigation plan be further revised and implemented. The 17-page revised mitigation plan, developed by the Dudek consulting firm, calls for its implementation in two phases. The first phase involves enhancement and restoration of suitable vegetation communities in the designated receptor sites prior to the introduction of the slender mariposa lily. The revised mitigation plan identifies proposed receptor sites within the specific plan area.

Additionally, the revised mitigation plan contains an implementation plan describing how the slender mariposa lily plants will be identified and salvaged. In addition, the implementation plan specifies the extensive measures to be taken in the receptor site when the slender mariposa lily seeds or bulbs have been planted. Further, there is a five-year monitoring and maintenance plan containing mandatory scheduling and other specified actions. Finally, annual reports are to be prepared and provided to the county and the fish and game department during the revised mitigation plan monitoring period. Section 7.0 of the revised mitigation plan specifies monitoring criteria concerning: habitat restoration and enhancement; seed collection and planting; transplantation; survival of both bulbs and seeds; propagation; maintenance, weed control and fencing; protection; and monitoring of the herbivory. In terms of slender mariposa lily survival once the bulbs and seeds are planted in the receptor area, the mitigation and monitoring plan states, "A minimum 1:1 ratio of the quantity of individuals impacted producing vegetative growth during any of the last 3 years over the 5-year monitoring period." The foregoing synthesis of the revised mitigation plan is only a general outline of the developer's duties.

The revised mitigation plan provides a rationale for expecting success: "As previously described, the proposed slender mariposa lily receptor sites will be located within the High Country [special management area] or Salt Creek area and will be preferentially sited adjacent to or near existing populations of slender mariposa lily that have been preserved. The close proximity of the proposed receptor sites to a natural population with appropriate soils, and hydrology, elevation, and slope exposure will help ensure that the introduced individuals experience the same environmental conditions in which the natural population presently exists. The physical and chemical similarities of the sites increased the probability of success of the mitigation program. Other suitable locations may be planted with slender mariposa lily and associated vegetative communities with the concurrence from the County [of Los Angeles] and [the fish and game department]."

The revised mitigation plan then identifies prior successful salvaging, transplanting and establishing of the plant. In the nearby RiverVillage footprint, seed and 687 bulbs were salvaged in late 2005 and early 2006. Two different studies reflected the following success rates, "Despite two successive years of drought following transplantation, there was a success rate of 69% in 2005-6, 34% in 2006-7, and 93% in 2007-8. . . ." The revised mitigation plan explains: "Of particular interest is documentation of the success of seeding efforts. Each year for the first three years of the program, persisting juveniles from the seeding efforts were documented. Some of this success is attributable to adaptive management measures, wherein during extreme drought conditions in the first and second years, some supplemental hand-watering of the plots occurred. By comparison, almost no naturally occurring [slender mariposa lily] in the nearby reference population were observed in 2005-6, none were observed in 2006-7, and approximately 75% of known individuals were observed flowering in 2007-8. The number of individuals observed each year has corresponded with rainfall amounts, with declining numbers in low rainfall years, and increasing numbers in higher rainfall years." The revised mitigation plan cites to or relies upon 11 different studies.

4. Mitigation measures 4.3-26 and 4.3-27

Implementation of the revised mitigation plan is but part of mitigation measure 4.3-27. The environmental impact report requires that the revised mitigation plan be further revised and submitted to the fish and game department. The fish and game department must review and approve the revised mitigation plan before *any* ground disturbance is to occur in the occupied slender mariposa lily habitat. Mitigation measure 4.3-27 specifies what the revised plan that will be submitted to the fish and game department must accomplish: "The revised plan will demonstrate the feasibility of enhancing or restoring slender mariposa lily habitat in selected areas to be managed as natural open space (i.e., the Salt Creek area or High Country [special management area/special environmental area] 20, spineflower preserves, or River Corridor [special

management area/special environmental area] 23 without conflicting with other resource management objectives."

Mitigation measure 4.3-27 also imposes specific performance criteria for the revised plan: habitat replacement will be at least at a 1:1 ratio (acres restored/enhanced to acres impacted); the receptor site locations are to be specified; the receptor sites are to be those specified in the revised mitigation plan; identification of the target vegetation including a description of cover and native shrub or grassland at the site to be destroyed; site preparation measures to be taken including topsoil treatment, soil decompaction, erosion control, temporary irrigation systems or other appropriate measures; methods for removing non-native plants such as mowing, weeding, raking, herbicide application or burning; the source of all plant propagules (seed, potted nursery stock and the like), the quantity and species of seed or potted stock of all plants to be introduced or planted into the restoration and enhancement areas; a schedule and action plan to maintain and monitor the enhancement and restoration areas; a schedule and action plan must include at minimum, qualitative annual monitoring for revegetation success and site degradation due to erosion, trespass or animal damage for a period no less than two years; as needed, where sites are near trails or other access points, measures such as fencing, signage or security patrols to exclude unauthorized entry into the restoration and enhancement areas; and contingency measures such as replanting, weed control or erosion control to be implemented if habitat improvement or restoration efforts are unsuccessful.

Mitigation measure 4.3-27 designates a success metric for restoration or enhancement operations and specifying when slender mariposa lily bulbs or seed may be planted: "Habitat restoration/enhancement will be judged successful when (1) percent cover and species richness of native species reach 50 percent of their cover and species richness at undisturbed occupied slender mariposa lily habitat at reference sites; and (2) the replacement vegetation has persisted at least one summer without irrigation. At that point slender mariposa lily propagules (seed or bulbs) will be introduced onto the site."

And mitigation measure 4.3-27 imposes other specific requirements on revised mitigation plan. Methods to collect propagules and introduce slender mariposa lily into

these mitigation sites must be specified. Unless otherwise specified by the fish and game department, in terms of the planting of seeds or bulbs, they must be planted: within 1.0 mile from where they are recovered; on similar slope exposures; and within 500 feet of elevation. The mitigation measure identifies where bulbs may be recovered subject to fish and game department guidelines. And, no bulbs will be translocated into areas within 300 feet of proposed or existing development. The developer or a designee must monitor the reintroduction to estimate slender mariposa lily survivorship (for bulbs) or seedling establishment (for seeded sites). The monitoring reports must identify: "all restoration/enhancement measures taken in the preceding year"; the success of these measures; changes in the site such as trespass, erosion or animal damage in qualitative terms; and "describe mariposa lily survival or establishment in quantitative terms." The reports are to be submitted to the fish and game department and be available to the public.

Finally, mitigation measure 4.3-27 specifies where the transplantation is to occur. A minimum of 133 acres of slender mariposa lily will be placed in specified specific plan areas. Also, the mitigation measure specifies: "Additional cumulative occupied area will be conserved and managed in the San Martinez Grande Canyon area at a 1:1 ratio (acres conserved and managed to acres impacted) based on impacts to cumulative occupied area within the Entrada planning area, as a means to ensure regional biodiversity of the species. Up to an additional 28 acres of slender mariposa lily cumulative occupied area can be conserved and managed in the San Martinez Grande Canyon area for this purpose."

Mitigation measure 4.3-26 requires training of all construction personnel pursuant to the Worker Environmental Awareness Program. Further, a qualified biologist is to provide "ongoing guidance" to construction personnel and contractors to insure compliance with mitigation measures and other provisions of law. In addition, the qualified biologist must insure no special-status species habitats will be affected by construction activity. And, the biologist must be present during initial vegetation clearing

and grading and submit to the fish and game department intermediate report of any errors resulting in impacts to special-status biological resources.

C. Discussion

1. Plaintiffs' deferral arguments

Only one of plaintiffs' slender mariposa lily arguments warrants significant discussion. Plaintiff argues that mitigation measure 4.3-27 improperly defers mitigation of the slender mariposa lily impacts. Plaintiffs reason as follows. As noted, mitigation measure 4.3-27 states that the revised mitigation plan be further revised. Once it is further revised, the revised mitigation plan is to be submitted to the fish and game department for approval. Plaintiffs argue that as a result: "The [slender mariposa lily mitigation m]easure contains no enforceable performance standards for . . . mitigation. The expectation is that the]revised slender mariposa lily mitigation measure] will contain enforceable performance standards. But nothing prevents [the developer] from changing the [slender mariposa lily mitigation measure] so that it is does not contain enforceable performance standards."

Plaintiffs rely on Guidelines section 15126.4, subdivision (a)(1)(B) which provides in part: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." Plaintiffs are correct that environmental planning documents which merely defer formulation of mitigation measures may fail to comply with Guidelines section 15126.4, subdivision (a)(1)(B). (1 Kostka & Zischke, *op. cit.*, § 14.12, pp. 14-14 to 14-15; *Preserve Wild Santee v. City of Santee, supra,* 210 Cal.App.4th at p. 281.) But as to whether in fact there has been improper deferring of the formulation of slender mariposa lily mitigation measures, we respectfully disagree with plaintiffs.

In *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 735-738, the Fifth Appellate District Court of Appeal reviewed prior decisions allowing for deferred formulation of mitigation measures. After analyzing those cases, our Fifth District colleagues concluded: "The foregoing cases demonstrate that the exception allowing the deferral of the formulation of mitigation measures has been expressed in a variety of ways. From these cases, we glean two principles that are important to this case. First, the deferral of the formulation of mitigation measures requires the agency to commit itself to *specific performance criteria* for evaluating the efficacy of the measures implemented. Second, the 'activity' constituting the [California Environmental Quality Act] project may not be undertaken without mitigation measures being in place 'to minimize any significant adverse effect on the environment of the activity.' (§ 21080.5, subd. (d)(3)(A.) In other words, the deferral relates only to the formulation of mitigation measures, not the mitigation itself. Once the project reaches the point where activity will have a significant adverse effect on the environment, the mitigation measures must be in place." (*POET, LLC v. State Air Resources Bd., supra*, 218 Cal.App.4th at pp. 737-738; see 1 Kostka & Zischke, *op. cit.*, § 14.12, p. 14-14 to14-15.)

Here both requirements concerning deferral of mitigation major formulation are satisfied. To begin with, as we have explained in detail in parts IV(B)(2)-(4), *ante*, of this opinion, specific performance standards are mandated ranging from issues concerning: site-specific surveys in conjunction with the fish and game department; standards for enhancing the survivability of the slender mariposa lily; planning for the relocating of the slender mariposa lily growth to other places in the specific plan area; identification of receptor sites including limiting areas for replanting, slope exposure and elevation requirements; prohibiting bulbs from being translocated into areas within 300 feet a proposed or existing development protection of the receptor sites; phased-in relocation of seeds and bulbs to receptor areas; a discussion of how the slender mariposa lily are to be identified and salvaged; specified procedures in the receptor sites for the slender mariposa lily; monitoring and maintenance requirements including qualitative assessments site degradation; the requirement of annual reports to be provided to the

county and the Fish and Game Department which will also be available to the public; the specified minimum ratio of 1:1 for survivability of new growth; the identification of other vegetation; topsoil treatment; soil compaction and erosion control; techniques for removing non-native plants; standards of success; the requirement of supervision by a qualified biologist of construction activity; and training requirements. And, until the fish and game department approves the revised slender mariposa lily mitigation and monitoring plan, no disturbance of the plant's occupied habitat may occur. These performance standards and ban on occupied habitat disturbance until after fish and game department approval of the revised mitigation measure do not violate Guidelines section 15126.4, subdivision (a)(1)(B). (*North Coast, supra,* 216 Cal.App.4th at pp. 647-648; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.)

2. Plaintiffs' other arguments

None of plaintiffs' other slender mariposa lily arguments warrant extensive analysis. First, plaintiffs contend the environmental impact report contains no performance criteria. Plaintiffs are correct that mitigation measures which are so undefined that it is impossible to gauge their effectiveness fail to comply with Guidelines section 15126.4, subdivision (a)(1)(B). (1 Kostka & Zischke, *op. cit.*, § 14.11, p. 14-14; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727.) However, explicit success and performance criteria are specified in mitigation measure 4.3-27 and the revised mitigation plan. Both the environmental impact report mitigation measure and the revised mitigation plan require habitat replacement enhancement at a 1:1 ratio. Also, the revised mitigation plan an identifies other measures of success, including a five-year time frame.

Second, plaintiffs argue there is no substantial evidence the mitigation plan will be effective. This contention has no merit. The environmental impact report removes 14.9 acres of impacted slender mariposa lily habitat. That 14.9 acres is to be replaced with a

minimum of 133 acres of conserved and managed specified growth areas. The development of the mitigation strategies is the result of studies by the Dudek consulting firm. As noted, the Dudek consulting firm had previously experienced successful results after removing seed and 687 bulbs from the RiverVillage footprint. (See pp. 51-52, *ante*.) Defendants could reasonably conclude the nearly 10-fold increase in the available growth area makes the 1:1 ratio achievable. Further, the January 2007 Dudek report prepared by Andy Thompson, a biologist and habitat restoration specialist identifies: a transplantation method; methodologies for salvaging; preparation of a receptor site; irrigation systems; the time for collecting seeds; probabilities of growth from seeds; and the preference for planting in areas where the. Mr. Thompson further explains that exclusionary fencing or plant cages are crucial to the success of a transplantation program because of damage by insects and animals. Mr. Thompson also identifies the 417 acres within the specific plan area that are suitable for slender mariposa lily mitigation efforts. Mr. Thompson's January 2007 report was prepared with the assistance of three other Dudek employees. Substantial evidence supports defendants' conclusions concerning slender mariposa lily mitigation efforts. We may not reweigh the conflicting evidence and inferences cited by plaintiffs. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 572; *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393.)

Third, plaintiffs' inconsistency argument has no merit. Plaintiffs argue the revised mitigation plan uses different success criteria than that appearing in mitigation measure 4.3-27. The respondent's brief refers to the draft plan as BIO-40, the Newhall Ranch Resource Management Development Plan environmental impact report/environmental impact statement mitigation measure designation. In any event, both the revised mitigation plan and mitigation measure 4.3-27 have the same 1:1 ratio requirement. There is no legally ponderable conflict in the success criterion between the two planning documents. The use of mitigation ratios based on habitat acreage fully complies with this state's environmental planning requirements. (*Banning Ranch Conservancy v. City of*

Newport Beach (2012) 211 Cal.App.4th 1209, 1232-1233; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1038-1041.)

Fourth, plaintiffs argued there are no *enforceable* slender mariposa lily mitigation strategies. This argument was not raised prior to or at the supervisors board hearing. Thus, it has been forfeited. (§ 21177, subd. (a); *Sierra Club v. City of Orange, supra,* 163 Cal.App.4th at p. 535.) Plaintiffs' challenges to the mitigation strategies contained in the Mission Village environmental impact report, the specific plan environmental impact report and the revised slender mariposa lily plan have no merit.

VI. GREENHOUSE GAS EMISSION ISSUE

Plaintiffs contend that defendant utilized a legally impermissible baseline to evaluate the project's greenhouse gas emissions. According to plaintiffs, defendants have relied upon a comparison between the project and a purely fictitious "business-as-usual" scenario. This baseline issue is currently under consideration by our Supreme Court. (*Center for Biological Diversity v. Department of Fish and Wildlife* (2014) 224 Cal.App.4th 1105, review granted July 9, 2014, S217763.)

Health and Safety Code section 38550[6] requires the California Air Resources Board (air resources board) to develop a plan to limit statewide greenhouse gas emissions to 1990 levels by 2020. (See *Association of Irritated Residents v. State Air Resources Bd.* (2012) 206 Cal.App.4th 1487, 1490; *Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal.App.4th 688, 694.) The air resources board has

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[6] Health and Safety Code section 38850 states: "By January 1, 2008, the state board shall, after one or more public workshops, with public notice, and an opportunity for all interested parties to comment, determine what the statewide greenhouse gas emissions level was in 1990, and approve in a public hearing, a statewide greenhouse gas emissions limit that is equivalent to that level, to be achieved by 2020. In order to ensure the most accurate determination feasible, the state board shall evaluate the best available scientific, technological, and economic information on greenhouse gas emissions to determine the 1990 level of greenhouse gas emissions."

determined, by law, greenhouse gas emissions must be reduced to 1990 levels by the year 2020. This is to be accomplished by developing actions to reduce greenhouse gas emissions. The lead agency for accomplishing this reduction in greenhouse gas emissions is the air resources board. (Health & Saf. Code, § 38510.) On December 11, 2008, the air resources board issued its 121-page "Climate Change Scoping Plan" which proposed a comprehensive set of actions designed to reduce overall greenhouse gas emissions. (See *Association of Irritated Residents v. State Air Resources Bd., supra*, 206 Cal.App.4th at p. 1492.)

The air resources board's scoping plan's executive summary states, "This plan calls for an ambitious but achievable reduction in California's carbon footprint. Reducing greenhouse gas emissions to 1990 levels means cutting approximately 30 percent from business-as-usual emissions levels projected for 2020, or about 15 percent from today's levels." The term "business-as-usual emissions levels" refers to what will occur if there is no transition to renewable energy technologies and increased energy efficiency programs. The scoping plan defines the business as usual methodology as a means of identifying the quantity of emissions if no greenhouse gas reduction measures are undertaken. The scoping plan also utilizes the term "no action taken" scenario to describe the level of greenhouse gas emissions if no environmentally appropriate corrective action is taken. The planned deviation from the business as usual or no action taken scenario is described in the air resources board's scoping plan: "Significant progress can be made toward the 2020 goal relying on existing technologies and improving the efficiency of energy use. A number of solutions are 'off the shelf,' and many – especially investments in energy conservation and efficiency – have proven economic benefits. Other solutions involve improving our state's infrastructure, transitioning to cleaner and more secure sources of energy, and adopting 21[st] Century land use planning and development practices."

Defendants selected as the significance criterion the reduction specified in Health and Safety Code section 38550. The environmental impact report states: "[T]he following significance criterion is used to assess whether the project would generate

greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment: [¶] Will the proposed project's [greenhouse gas] emissions impede compliance with the [greenhouse gas] emission reductions mandated in [Assembly Bill No.] 32?" (Italics deleted.) Defendants had discretion to select the significance criterion for greenhouse gas emissions. (Guidelines, § 15064.4, subd. (a); *Citizens for Responsible Equitable Environmental Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 336.) The Court of Appeal for the First Appellate District, Division Four explained a lead agency's responsibilities in assessing the significance of greenhouse gas emissions: "In assessing the significance of these emissions, the lead agency should consider the extent to which the project may affect emissions levels; whether emissions exceed an applicable threshold of significance; and whether the project complies with regulations or requirements adopted to implement statewide, regional, or local plans to reduce [greenhouse gas emissions]." (*North Coast, supra*, 216 Cal.App.4th at p. 650; see *Citizens for Responsible Equitable Environmental Dev.* v. *City of Chula Vista*, *supra,* 197 Cal.App.4th at p. 335.) Utilization of the Health and Safety Code section 38550 significance criterion has been approved in three different cases. (*Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 841 ["The City properly adopted Assembly Bill 32's reduction targets for [greenhouse gas] emissions as the threshold-of-significance standard in determining whether the [project's] [greenhouse gas] emissions constituted a significant environmental impact."]; *North Coast, supra,* 216 Cal.App.4th at p. 651 [adopting an ultimate goal of 15 per cent reductions from the 1990 level of greenhouse gas emissions]; *Citizens for Responsible Equitable Environmental Dev. v. City of Chula Vista, supra,* 197 Cal.App.4th at p. 336 ["Here, the City properly exercised its discretion to utilize compliance with Assembly Bill No. 32 (2005-2006 Reg. Sess.) as the threshold."].) The Sacramento and San Joaquin Valley air quality districts have endorsed the use of the Health and Safety Code section 38550 significance criterion by lead agencies in preparing environmental planning documents.

Further, there is no merit to the argument that the Health and Safety Code section 38550 criterion is an illusory criterion in this context. The environmental impact report

examines the existing emissions resulting from farmland/agricultural operations and movie production uses. The environmental impact report assesses the measurable current greenhouse gas emissions are roughly 363 metric tons annually. But the environmental impact report cautions that the periodic leasing of portions of the project site for movie production cannot be readily accounted for. All existing emissions will be eliminated by the project.

No doubt, there will be a significant increase above existing emissions levels. The environmental impact report utilizes emissions data based on California Energy Commission studies and software developed by the air resources board and the Southern California Air Quality Management District. The environmental impact report assesses an inventory of eight categories of greenhouse gas emissions: vegetation; construction; residential; non-residential; mobile; municipal; recreational (pools); and area pollution which includes hearth (e.g. fireplaces) and landscape (e.g. lawn mowing) environmental discharges. The emissions inventory was prepared consistent with methodologies established by the California Climate Action Registry wherever possible. Further, the inventories were conducting utilizing worst-case environmental assumptions. The supporting data for the environmental impact report's statistical analysis is based on the 239-page Climate Change Technical Report Mission Village prepared by ENVIRON International Corporation.

The project would result in an annualized total of 98,551 tons of greenhouse gas emissions if no improved environmental efficiencies are utilized. The environmental impact report relies upon air resources board analysis concerning greater environmental efficiencies. Utilizing those efficiencies, the project will instead result in 64,017 tons of greenhouse gas emissions. And, the environmental impact report notes that the project's proposed annualized emissions are 35 percent below the so-called business as usual or no action taken projections. The greenhouse gas emissions reductions are greater than the percentage figure adopted by the Air Resources Board for necessary reductions by 2020.

Thus, there is no basis under any standard of judicial review of administrative action for rejecting the environmental impact report's discussion concerning greenhouse

gas emissions. The criterion significance has been approved in other cases. Further, the environmental impact report assesses what will happen with the development if no action is taken as distinguished from what will occur with improved environmental efficiencies. There is nothing illusory about the environmental impact report greenhouse gas emissions discussion.

VII. FAILURE TO ANALYZE AND MITGATE THE EFFECT OF COPPER RUNOFF IN THE SANTA CLARA RIVER ON JUVENILE STEELHEAD

A. Plaintiffs' Contentions

Plaintiffs contend that defendants failed to analyze the cumulative sub-lethal impacts of discharges of dissolved copper on juvenile steelhead trout. The environmental impact report reaches five important conclusions about runoff of sub-lethal impacts of dissolved copper. We first will summarize the environmental impact report general conclusions about dissolved copper and other metals runoff. Then, with reference to plaintiffs' contentions, will examine the environmental impact report and responses to public comments which discuss juvenile steelhead trout in particular. Under the applicable standard of review, we conclude substantial evidence supports defendants' finding of no significant impact on juvenile steelhead trout.

B. Environmental Impact Report Conclusions

First, the environmental impact report concludes the *concentration of trace metal loads of dissolved copper in run-off* will be reduced. At present, according to the 2011 October 2011 Geosyntec Consultants' technical report, dissolved copper concentration is 10.5 milligrams per liter. After project completion, with the use of low impact development design features, the dissolved concentration will be *reduced* to 6.4 milligrams per liter.

Second, the environmental impact report concludes the "[a]verage annual trace metal loads" (the total amount of dissolved cooper) discharged from the project area will increase slightly. The existing average annual stormwater run-off is 153 acre-feet annually. After development and with the incorporation of environmentally progressive project design features, the average annual stormwater runoff will increase to 255 acre-feet annually. These project design features include site design, source control, low impact development features and treatment control best management practices which comply with the Standard Urban Stormwater Mitigation Plan. The annual dissolved copper load, as confirmed by the 2001 Geosyntec Consultants' technical report, will increase from four to seven pounds per year. This increased discharge load is obviously a matter of concern, according to the October 2011 Geosyntec Consultants' technical report, because of their effects on aquatic life as well as groundwater. The post-development increased runoff volume primarily results from greater imperviousness and reduced soil infiltration capacity caused by construction-related compaction. Project design features will reduce trace metals from all runoff.

Third, the environmental impact report explains that the concentration of dissolved copper run-off will be reduced but the total amount released into the Santa Clara River will increase: "The data indicates . . . [t]he post-development concentrations or dissolved copper . . . concentrations are predicted to decrease. These results can be explained by the difference in [even mean concentration] values observed in representative monitoring data from the pre-developed agriculture, oil and gas extraction, and open space condition and the post-developed urban condition and the low trace metal effluent concentrations observed in low impact development best management practice[s]. Increases in dissolved copper . . . loads can be attributed to the increase in runoff volume predicted for the post-development scenario."

Fourth, the environmental impact report concludes that the "[p]redicted average annual concentrations of dissolved copper" will be below the California Toxics Rule criteria. The copper enters the Santa Clara River in a dissolved form which is why the California Toxics Rule criteria applies. The federal Environmental Protection Agency

has enacted water quality standards for certain toxic pollutants in this state. The federal agency action was necessitated because California had failed to adopt water quality standards for certain toxic pollutants including dissolved copper. (40 C.F.R. § 131.38 (2015); 65 Fed.Reg. 31682, 3171 et seq. (May 18, 2000); see 33 U.S.C. § 1313(c)(4); *Waterkeepers Northern California v. State Water Resources Bd.* (2002) 102 Cal.App.4th 1448, 1455.)

The October 2011 Geosyntec Consultants' technical report utilizes the California Toxics Rule criteria as *one type of benchmark* to evaluate potential environmental effects. As we will explain, the environmental impact report utilizes the California Toxics Rule as one benchmark in its significance determination. The environmental impact report relies upon the October 2011 Geosyntec Consultants' technical report analysis concerning the California Toxics Rule. The environmental impact report adopts the following analysis 2011 Geosyntec Consultants' analysis for determining California Toxics Rule: "The minimum wet-weather hardness value of 250 [milligrams per liter] as [calcium carbonate] from [United States Geological Survey] station 11108500 was used to approximate [California Toxics Rule] criteria for metals. This value is likely to be more representative of conditions in the Santa Clara River within the [Mission Village project] area than the [Santa Clara River] Station 29 based on the water quality data summarized . . . above." According to the 2011 Geosyntec Consultants' analysis, the California Toxics Rule criteria for dissolved copper is 32 micrograms per liter. The range of observed concentrations in the Santa Clara River at the project ranged between 3.3 and 22.6 micrograms per liter. The average wet weather concentration at Santa Clara River Station 29 is 7.3 micrograms per liter. According to the 2011 Geosyntec Consultants' analysis, the predicted average annual concentration of dissolved copper will be 6.4 micrograms per liter. The 6.4 micrograms per liter concentration will be below the 32 micrograms per liter established by the California Toxics Rule. As a result, according to the October 2011 Revised Water Quality Technical Report prepared by Geosyntec Consultants, "Based on the comprehensive site design, source control, [low impact development], and treatment control [best management practices] strategy and the

comparison with the in-stream water quality monitoring data and benchmark water quality criteria . . ., the project will not have significant impacts resulting from trace metals." As is clear, the Geosyntec Consultant's technical report is not based solely on the California Toxics Rule. Rather, the insignificance finding is based on the *California Toxics Rule benchmark and development design specifications*.

The environmental impact report concludes the effect of all trace metals, including dissolved copper, will be less than significant both in terms of the project and related development. According to the environmental impact report: "The project site design, source control, [low impact development], treatment control, and hydromodification control [best management practice]s planned as [project design feature]s meet or exceed the requirements of the [Municipal Separate Storm Sewer System] Permit, including [Standard Urban Stormwater Mitigation Plan] requirements, and also satisfy the [low impact development p]erformance [s]tandard. Therefore, potential impacts from the project on receiving water quality are expected to be less than significant." The project design features are described in the environmental impact report: "Project [design features] include low impact/site design, source control, [low impact development] and treatment control [best management practice]s, in compliance with the [standard urban stormwater mitigation plan] requirements and the [low impact development p]erformance [s]tandard. Specific low impact/site design [project design feature]s that would be implemented to minimize increases in trace metals include directing drainage from impervious areas to [low impact development best management practice]s such as bioretention areas and the selection of building material for roof gutters and downspouts that do not include copper or zinc. Source control [project design feature]s that target metals include education for property owners, [best management practice] maintenance, and street sweeping private streets and parking lots. The [low impact development] treatment control [best management practice]s would also reduce trace metals in the runoff from the proposed development." As can be seen, the environmental impact report does not merely rely upon the California Toxics Rule in determining whether dissolved copper runoff will have a significant impact on the environment.

Finally, the cumulative effect of dissolved copper runoff in the contemplated development in the specific plan and adjacent areas will be less than significant. The environmental impact report concludes in terms of cumulative impacts: "Any future urban development occurring in the Santa Clara River watershed also must comply with the [Municipal Separate Sewer Storm System] Permit, [standard urban stormwater mitigation plan] and County [Low Impact Development] Manual requirements. By extrapolating the results of the direct and cumulative impact analysis modeling it can be predicted that analysis of other proposed development combined with existing conditions would have similar water quality results. Therefore, cumulative impacts on surface water quality of receiving waters from the project and future urban development in the Santa Clara River Watershed are addressed through compliance with the [Municipal Separate Sewer Storm System] Permit and [standard urban stormwater mitigation plan] requirements; Construction General Permit requirements; General Dewatering Permit requirements; and benchmark Basin Plan water quality objectives, [California Toxic Rule] criteria, and [total maximum daily load]s, which are intended to be protective of beneficial uses of the receiving waters. Based on compliance with these requirements designed to protect beneficial uses, cumulative water quality impacts would be mitigated to a level that is less than significant."

The environmental impact report identifies the mandatory construction requirements calculated to reduce adverse impacts from runoff-related adverse impacts. These include the Municipal Separate Storm System Permit Requirements for New Development as Defined in the Standard Urban Stormwater Mitigation Plan Permit and low impact design requirements. This includes extensive specifications of low impact development best management practices performance standards including runoff treatment requirements.

C. Analysis

First, defendants contend that the no significant impact finding concerning steelhead trout is not supported by substantial evidence. This contention has no merit. As noted, the environmental impact report concludes, based in part upon October 2011 Revised Water Quality Technical Report prepared by Geosyntec Consultants: the concentration of trace metal loadings of dissolved copper in runoff-off will be reduced from 10.5 to 6.4 milligrams per liter; the average annual trace metal loadings discharged from the project area will increase slightly; this is because the annual stormwater runoff will increase from 153 to 255 acre-feet annually; the annual dissolved copper load will increase from four to seven pounds annually; the average annual concentrations of dissolved copper will be below the California Toxics Rule criteria; the California Toxics Rule criteria is but one benchmark utilized in the environmental impact report to assess significance; and both the impact of the project's cumulative impacts will be reduced to less than significant levels.

Further, the Biota portion of the environmental impact report expressly discusses potential impacts on the steelhead trout. The environmental impact report reviews prior studies which evaluate potential impacts from development upstream from the Los Angeles and Ventura Counties line. The Biota section concludes: "[D]ue to the approximately 5-mile distance from documented occurrences of southern steelhead in Piru Creek and the intervening Dry Gap, these potential secondary effects would be substantially attenuated before they could affect any downstream habitat and individuals. Therefore, the proposed Mission Village project would not contribute to potential significant cumulative impacts to southern steelead in the [Santa Clara River watershed]." The environmental impact report indicates in the absence of "potential significant secondary impacts" in the Santa Clara River, no mitigation is legally mandated.

Nonetheless, the environmental impact report concludes that the specific plan environmental impact report mitigation measures will additionally reduce the potential for secondary impacts. According to the environmental impact report: "Impacts such as

increased chemical pollutants, sedimentation, and increased human activity would be mitigated by measures such as the protection and management of the River Corridor [Special Management Area/Special Environmental Area] 23, creation of buffer areas between the River Corridor [Special Management Area/Special Environmental Area] 23 and development, water quality requirements, and restrictions on public access. [The Pacific Advanced Civil Engineering, Inc. Floodplain Hydraulics Impacts Assessment - Santa Clara River] found that there would be no significant impacts to water flows, velocities, depth, sedimentation, or floodplain and channel conditions downstream of the [Resources Management and Development/Spineflower Conservation Plan] area over the long term as a result of the [Resources Management and Development/Spineflower Conservation Plan] project improvements." (Fn. omitted.) The foregoing is of consequence to post-development conditions within the Dry Gap in connection with the Newhall Ranch Wastewater Reclamation Plant. By parity of reasoning, the Biota section of the environmental impact report concludes: "Impacts to southern steelhead habitat . . . and downstream secondary effects would be less than significant. Potential impacts would be further reduced by a set of mitigation measures or other special-status fish that occur in the Santa Clara River adjacent to the Mission Village project site. . . . Therefore, the proposed Mission Village project would not contribute to potential significant punitive impacts to the southern steelhead in the [Santa Clara River watershed]."

Plaintiffs argue though that this analysis is insufficient in that it does not address the sub-lethal dissolved copper runoff impacts on juvenile steelhead trout. However, in the written response to public comments, the administrative record sufficiently addresses the issue of sub-lethal water quality impacts on aquatic life. In response to public comments, defendants relied upon an engineer corps study concerning steelhead trout presence near the project area. Five miles south of the project is the so-called "Dry Gap" in the Santa Clara River. The environmental impact report describes the Dry Gap thusly: "The Santa Clara River is perennial downstream to approximately 3.5 miles downstream of the Los Angeles County/Ventura County line. Downstream of the [c]ounty line, the Santa Clara River flows through the Piru groundwater basin where surface flows in the

river are lost to groundwater. This ephemeral reach of the river is referred to as the 'Dry Gap.' Natural flows in the river only occur in the winter due to storm runoff and vary significantly from year to year." According to the engineer corps, there is no historic record of steelhead presence upstream of the Dry Gap. The engineer corps conducted an ecological effects evaluation for the Newhall Ranch Resources Management and Development environmental impact report and study. The engineer corps concluded there would be no impact on either the steelhead or its critical habitat. The engineer corps reasoned the minimal impact on the Santa Clara River morphology plus the absence of any steelhead in the project area avoided any impact. As noted, there is substantial evidence the Mission Village project will have no significant impact on the Santa Clara River morphology.

The only time there is river overflow of the Dry Gap is during large storm events. As confirmed by the GST Water Solutions Inc. 2008 Dry Gap study, it has never experienced a year-round flow; much less one that allow steelhead to reach the project area. As previously noted, the Mission Village project watershed involves an infinitesimal quantity of the Santa Clara River watershed. In response to public comments concerning water quality effects south of the Dry Gap, the environmental impact report relates: the Santa Clara River watershed encompasses 1,634 square miles within Los Angeles and Ventura Counties; the Mission Village project comprises 0.1 percent of the entire Santa Clara River watershed; the Mission Village project area is within Santa Clara River Reach 5; this is approximately 40 miles upstream of the Santa Clara River Estuary; at the Ventura County line, the watershed area comprises approximately 640 square miles; the project area comprises approximately 0.1 percent of the Santa Clara River watershed upstream in the specific plan area; and that the project would comprise approximately 1.1 percent of the total impervious area in the Santa Clara River ultimate planned buildout for watershed above the project area. Further, only 12 percent of all days create what are classified as wet periods. Wet day runoffs at the county line have a total annual volume of 54,300 acre-feet per year. The total annual volume from the Mission Village project is only 420 acre-feet per year. Additionally, the

dissolved copper concentrations are measured at its outfall before the stormwater is mixed with the larger water volume in the Santa Clara River (the so-called "end-of-pipe" point of delivery). Thus, the dissolved copper concentration is measured only at the edge of the project not after is mixed into a larger volumes of river water.

The foregoing analysis in response to comments is based upon professional assessments of experienced engineers and scientists. There is no merit to plaintiffs' contention that the administrative record fails to reflect appropriate discussion of the risks of adverse impacts on steelhead trout. In addition, there is no merit to the related contention that defendants ignored those risks. We may not reweigh the conflicting evidence and inferences relied upon by plaintiffs. (*Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 572; citing *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at p. 393.) And finally, there is no merit to plaintiffs' argument that the environmental impact report fails to provide the supervisors board and other county officials with an informative environmental document. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority, supra,* 57 Cal.4th at p. 447; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 428.)

One remaining contention warrants brief comment. There is no merit to plaintiffs' argument that defendants should not have used the California Toxics Rule to evaluate the potential toxicity of dissolved copper runoff. Defendants had the discretion to use the federally mandated California Toxics Rule for assessing the effects of dissolved copper in this state's waters. (*North Coast, supra,* 216 Cal.App.4th at pp. 624-625; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492-493.) Adoption of the federal promulgated California Toxics Rule was not an abuse of discretion. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 903; see 1 Kostka & Zischke, *op. cit.*, § 13.13, pp. 13-12 to 13-13.) Nor were defendants required to adopt a National Oceanic and Atmospheric Administration study entitled, "An Overview of Sensory Effects on Juvenile Salmonids Exposed to Dissolved Copper: Applying a Benchmark Concentration Approach to Evaluate Sublethal Neurobehavioral

Toxicity." The California Toxics Rule is promulgated by the federal Environmental Protection Agency. The National Oceanic and Atmospheric Administration technical memorandum is a study, not a federally promulgated rule directed at California. No abuse of discretion occurred.

VIII. DISPOSITION

The judgment is affirmed. Defendants, County of Los Angeles and its Board of Supervisors and the real party in interest, The Newhall Land and Farming Company, shall recover their costs on appeal from plaintiffs: California Native Plants Society; Friends of the Santa Clara River; Center for Biological Diversity; Santa Clarita Organization for Planning and the Environment; and Wishtoyo Foundation and its Ventura Coastkeeper Program.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KIRSCHNER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.